# CHITIMACHA AND MASHANTUCKET PEQUOT INDIAN LAND CLAIMS

## HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

**S. 2294**

TO PROVIDE FOR THE SETTLEMENT OF THE LAND CLAIMS OF THE CHITIMACHA TRIBE OF LOUISIANA, AND FOR OTHER PURPOSES

AND

**S. 2719**

THE MASHANTUCKET PEQUOT INDIAN CLAIMS SETTLEMENT ACT

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JULY 14, 1982

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
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# CHITIMACHA AND MASHANTUCKET PEQUOT INDIAN LAND CLAIMS

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JULY 14, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:07 a.m., in room 6226, Dirksen Senate Office Building, Senator William S. Cohen [chairman] presiding.

Present: Senator Cohen.

Staff present: Timothy Woodcock, staff director; Peter Taylor, general counsel; Max Richtman, minority staff director; Virginia Boylan, minority staff attorney; Marilyn Heller, staff attorney; and Beth Pardo, staff assistant.

Senator COHEN. Good morning. The hearing will come to order.

This morning, the committee will consider two pieces of legislation: S. 2294, a bill to settle claims of the Chitimacha Tribe of Louisiana; and S. 2719, a bill to settle the claims of the Western Pequot Tribe of Connecticut.

The settlements arrived before the Indian Affairs Committee with the support of the affected parties and the congressional delegations of the respective States. They are consensus settlements which have been reached through negotiation.

The committee has not had an opportunity to review the position of the administration on these bills and looks forward to its testimony this morning.

At this point, without objection, I will place copies of S. 2294 and S. 2719 in the hearing record.

[The bills follow. Testimony resumes on p. 22.]

II

97TH CONGRESS
2D SESSION

# S. 2294

To provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, FEBRUARY 22), 1982

Mr. JOHNSTON (for himself and Mr. LONG) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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# A BILL

To provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Chitimacha Claims Settlement Act".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(1) the Chitimacha Tribe of Louisiana is asserting claims for damages and for the possession of a large area of land in the State of Louisiana on the ground

that the original transfers of the lands by the tribe to various persons were made in violation of the Trade and Intercourse Act of 1790 (1 Stat. 137) or subsequent versions of that Act;

(2) substantial economic and social hardship to a large number of landowners in the State of Louisiana may result if the tribe's claims are not resolved immediately; and

(3) the Congress shares with the State of Louisiana and the landowners in the area of the claim a desire to remove all clouds on titles resulting from the tribe's claims.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "tribe" means the Chitimacha Tribe of Louisiana, a federally recognized Indian tribe which has adopted a constitution and bylaws pursuant to the Act approved June 18, 1934 (25 U.S.C. 461 et seq.), and any predecessor in interest of such tribe;

(2) the term "Chitimacha Reservation" means the lands of the tribe and all lands which are transferred to or acquired by the Secretary pursuant to the provisions of this Act to be held in trust by the United States for the benefit of the tribe;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "State" means the State of Louisiana;

(5) the term "land or natural resources" means any real property or natural resource or any interest in or right to any real property or natural resource, including minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights; and

(6) the term "transfer" means any transaction involving any change of title to or control of any land or natural resources or any right or interest in any land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, or any transaction that results in a change or possession of control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS; EXTINGUISHMENT OF INDIAN ABORIGINAL TITLES AND INDIAN CLAIMS

SEC. 4. (a)(1) Any transfer from, by, or on behalf of the tribe or any member of the tribe before the date of enactment of this Act, including a transfer pursuant to any statute or treaty of the State, of any land or natural resources located in the State shall be deemed to have been made in accordance with the Constitution and all laws of the United States

(including the Trade and Intercourse Act of 1790) that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians. Any such transfer shall be deemed to have been made with the consent and approval of the Congress as of the date of such transfer.

(2) Any aboriginal title held by the tribe or any member of the tribe to any land or natural resources the transfer of which was consented to and approved in paragraph (1) shall be considered extinguished as of the date of such transfer.

(b)(1) Any claim for damages or possession of land and natural resources (including claims for damages for trespass and for use and occupancy) by, or on behalf of, the tribe or any member of the tribe against the State, any political subdivision of the State, or any person which is based on—

(A) any transfer of land or natural resources to which subsection (a)(1) of this section applies, or

(B) any aboriginal title to land or natural resources to which subsection (a)(2) of this section applies,

shall be considered extinguished as of the date of any such transfer.

(2) The United States agrees to hold the State, its political subdivisions, and all present or former owners or occupants of such lands harmless for any damages suffered by the

United States due to the compromise of any claim under this section.

(c)(1) Notwithstanding any other provision of law, the constitutionality of this section may not be drawn in question in any action unless such question has been raised in—

(A) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on the date of enactment of this Act; or

(B) an answer contained in a reply to a complaint filed before the end of such period.

(2) Exclusive original jurisdiction of any action in which the constitutionality of this Act is drawn in question is vested in the United States District Court for the Western District of Louisiana.

(3) Any action to which paragraph (1) applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the Western District of Louisiana.

(d) This section shall take effect upon the appropriation of $7,500,000 as authorized under section 5(d) of this Act.

ESTABLISHMENT OF CHITIMACHA CLAIMS SETTLEMENT FUND

SEC. 5. (a)(1) As compensation to the tribe for the extinguishment of any claim under section 4, there is established

in the United States Treasury a fund to be known as the Chitimacha Claims Settlement Fund. This fund shall be held in trust by the Secretary for the benefit of the tribe and administered in accordance with this Act and any terms established by the Secretary and agreed to by the tribe. No part of the principal of such fund may be distributed to the individual members of the tribe.

(2) The Secretary shall pay semiannually to the tribe any income derived from the fund. Once such a payment has been received by the tribe, the use of such payment shall be free of regulation by the Secretary and the United States shall have no further trust responsibility to the tribe or its members with respect to such payment, except that lands purchased by the tribe with funds from such payment shall be taken and held in trust by the United States for the benefit of the tribe upon the request of the tribal governing body. Lands so held by the United States shall be part of the Chitimacha Reservation.

(b)(1) The Secretary shall spend a sum not to exceed $4,000,000 of the principal of the fund to acquire land selected by the tribe. Lands acquired pursuant to this subsection shall be held in trust by the United States for the benefit of the tribe and shall be part of the Chitimacha Reservation.

(2) For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land

purchased by the Secretary with moneys from the fund shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954.

(c)(1) The Secretary is authorized to acquire options to purchase land on behalf of the tribe. The total amount used to acquire such options shall not exceed $200,000.

(2) The sum paid to acquire any such option shall not exceed 5 per centum of the fair market value of the land subject to the option. Each option agreement entered into by the Secretary shall provide that such sum shall be applied to the purchase price of such land, if the purchase is completed in accordance with the terms of the option agreement.

(d) There is authorized to be appropriated $7,500,000 to the fund.

JURISDICTION OVER THE CHITIMACHA RESERVATION

SEC. 6. (a) Subject to such conditions as the Secretary may establish, the tribe, through the tribal governing body, is authorized to establish a tribal court system and a tribal police force. The tribe, through the tribal governing body, may terminate any such court system or police force at any time.

(b) Any Chitimacha tribal court system established under subsection (a) of this section shall have exclusive jurisdiction over the following subjects:

(1) Any criminal offense committed on the Chitimacha Reservation by a member of the tribe against another member of the tribe or the property of the tribe or any such member if the maximum term of imprisonment authorized does not exceed six months and the maximum fine authorized does not exceed $500.

(2) Any criminal offense committed on the Chitimacha Reservation by a juvenile member of the tribe which, if committed by an adult, would be within the exclusive jurisdiction of the Chitimacha Tribe under paragraph (1).

(3) Any civil action between members of the tribe arising on the Chitimacha Reservation which is cognizable as a small claim under the laws of the State.

(4) Any domestic relations matter relating to marriage, divorce, or support between members of the tribe both of whom reside on the Chitimacha Reservation.

(c) All laws of the State relating to criminal and juvenile offenses and all civil laws of the State that are of general application to private persons and private property shall apply within the Chitimacha Reservation and the State shall have exclusive jurisdiction over such offenses and all civil actions arising under such laws, except that if—

(1) the tribe is operating a tribal court system established in accordance with subsection (a) of this section, the State shall not have jurisdiction over any subject described in subsection (b) of this section, or

(2) the tribe has jurisdiction over Indian child custody proceedings in accordance with section 7 of this Act, the State shall not have jurisdiction over such proceedings.

(d) The governing body of Chitimacha Tribe is authorized to enter into agreements with the State or any parish of the State to provide such police training, equipment, and personnel as may be necessary, including the provision of facilities for the incarceration of any person arrested by the tribal police department or subject to a judgment of conviction by the tribal court.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 7. (a) The Chitimacha Tribe may assume exclusive jurisdiction over Indian child custody proceedings in accordance with the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.). Before the tribe may assume such jurisdiction over Indian child custody proceedings, the tribe shall present a petition to assume such jurisdiction to the Secretary, and the Secretary shall consider such petition, in the manner prescribed by section 108 of such Act.

(b) Until the Chitimacha Tribe has assumed exclusive jurisdiction over Indian child custody proceedings pursuant to this section, the State shall continue to have exclusive jurisdiction over the Indian child custody proceedings of the tribe. Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court of the State has already assumed jurisdiction.

EFFECT OF PAYMENTS TO THE TRIBE

SEC. 8. (a) No payment for the benefit of the tribe pursuant to this Act may be considered by any agency or department of the United States in determining or computing the eligibility of the State or any political subdivision of the State for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments to the tribe or any member of the tribe from the State shall not be considered by any agency or department of the United States in determining or computing the eligibility of the tribe or any member of the tribe for participation in any financial aid program of the United States, except that the actual financial situation of the tribe or a member of the tribe may be considered by such agency or department if such tribe or member is applying for benefits from a financial aid program which requires a showing of need by an applicant.

(c) The availability or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise used as the basis for—

(1) denying the household of any member of the tribe or any member of such household participation in any federally assisted housing program;

(2) denying or reducing any Federal financial assistance or Federal benefit to which such household or member would otherwise be entitled; or

(3) denying or reducing any Federal financial assistance or other Federal benefit to which the tribe would otherwise be entitled or for which it would otherwise be eligible.

INSEPARABILITY

SEC. 9. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act shall be invalidated.

II

97TH CONGRESS
2D SESSION

# S. 2719

Entitled the "Mashantucket Pequot Indian Claims Settlement Act".

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IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 8), 1982

Mr. DODD (for himself and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

Entitled the "Mashantucket Pequot Indian Claims Settlement Act".

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. This Act may be cited as the "Mashantucket Pequot Indian Claims Settlement Act".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that—

(1) there is pending before the United States District Court for the District of Connecticut a civil action which involves Indian claims to certain public and private lands within the town of Ledyard, Connecticut;

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(2) the pendency of this lawsuit has placed a cloud on the titles to much of the land in the town of Ledyard, including lands not involved in the lawsuit, which has resulted in severe economic hardships for the residents of the town;

(3) the Congress shares with the State of Connecticut and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claims; and

(4) the parties to the lawsuit and others interested in the settlement of Indian land claims within the State of Connecticut have executed a settlement agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Connecticut.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "Tribe" means the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) as identified by chapter 832 of the Connecticut General Statutes and represented, as of the date of enactment of this Act, by the Mashantucket Pequot Tribal Council;

(2) the term "land or natural resources" means any real property or natural resources, or any interest

in or right to any real property or natural resource, including minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(3) the term "private settlement lands" means (A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the Secretary of State of the State of Connecticut in accordance with the settlement agreement referred to in section 2(4) of this Act, and (B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on the date of enactment of this Act;

(4) the term "public settlement lands" means the lands described in sections 2(a) and 3 of the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved on June 9, 1982;

(5) the term "settlement lands" means private settlement lands and public settlement lands;

(6) the term "Secretary" means the Secretary of the Interior;

(7) the term "transfer" means any transaction involving any change of title to or control of any land or natural resources or any right or interest in any land

or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, or any transaction or treaty, compact, or statute of any State which results in a change of possession or control of land or natural resources; and

(8) the term "reservation" means the reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes.

CONNECTICUT INDIAN CLAIMS SETTLEMENT FUND

SEC. 4. (a) As compensation to the Tribe for the extinguishment of any claim under section 5 of this Act, there is established in the United States Treasury a fund to be known as the Connecticut Indian Claims Settlement Fund. This fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this Act.

(b)(1) The Secretary shall spend, at the request of the Tribe, the principal of the fund and any income accruing to the fund to acquire land or natural resources for the Tribe or for similar purposes which promote the economic development of the Tribe.

(2) Lands or natural resources acquired under paragraph (1) which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe.

(3) Lands or natural resources acquired under paragraph (1) which are located outside of the settlement lands shall be

held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such lands and natural resources. Such lands or natural resources shall not be subject to any restriction against alienation under the laws of the United States or the State of Connecticut.

(c) For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer of private settlement lands to which subsection (b)(2) applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of such code.

(d) There is authorized to be appropriated $900,000 to be deposited in the fund.

APPROVAL OF PRIOR TRANSFERS; EXTINGUISHMENT OF INDIAN ABORIGINAL TITLES AND INDIAN CLAIMS

SEC. 5. (a) Any transfer before the date of enactment of this Act from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before the date of enactment of this Act from, by, or on behalf of any Indian or nation, tribe, or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws of the United States specifically applicable to transfers of land or natural resources from, by,

or on behalf of any Indian, or nation, tribe, or band of Indians. Any such transfer shall be deemed to have been made with the consent and approval of the Congress as of the date of such transfer.

(b) Any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian or nation, tribe, or band of Indians, to any land or natural resources the transfer of which was consented to and approved in subsection (a) shall be considered extinguished as of the date of such transfer.

(c) Any claim (including any claim for damages for trespass or for use and occupancy) by the Tribe or any member of the Tribe or by any other Indian or nation, tribe, or band of Indians (including any predecessor or successor in interest of any such Indian, or nation, tribe, or band of Indians) against the United States, any State or subdivision thereof, or any other person which is based on—

(1) any transfer of land or natural resources which was consented to and approved in subsection (a), or

(2) any aboriginal title to land or natural resources the transfer of which was consented to and approved in subsection (a),

shall be considered extinguished as of the date of any such transfer.

(d)(1) This section shall take effect upon the appropriation of $900,000 as authorized under section 4(d) of this Act.

(2) The Secretary shall publish notice of such appropriation in the Federal Register when the funds are deposited in the fund.

JURISDICTION OVER RESERVATION

SEC. 6. Notwithstanding the provision relating to a special election in section 406 of the Act approved April 11, 1968 (25 U.S.C. 1326), the reservation and the settlement lands are declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act.

LIMITATION OF ACTIONS; FEDERAL COURT JURISDICTION

SEC. 7. (a) Notwithstanding any other provision of law, the constitutionality of this Act may not be drawn into question in any action unless such question has been raised in—

(1) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on the date of enactment of this Act, or

(2) an answer contained in a reply to a complaint filed before the end of such period.

(b) Notwithstanding any other provision of law, exclusive original jurisdiction of any action in which the constitu-

tionality of this Act is drawn into question is vested in the United States District Court for the District of Connecticut.

(c) Any action to which subsection (a) applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the District of Connecticut.

RESTRICTION AGAINST ALIENATION

SEC. 8. (a) Subject to subsection (b), lands within the reservation and any settlement lands which are held by the Secretary for the benefit of the Tribe at any time after the date of enactment of this Act shall be subject to the laws of the United States relating to Indian lands, including section 2116 of the Revised Statutes (25 U.S.C. 177).

(b) Notwithstanding subsection (a), the Tribe may lease lands for any term of years to the Mashantucket Pequot Housing Authority, or any successor in interest to such Authority.

EXTENSION OF FEDERAL RECOGNITION AND PRIVILEGES

SEC. 9. (a) Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this Act, all laws and regulations of the United States of general application to Indians or Indian nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this Act shall be applicable to the Tribe.

(b) Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of the date of enactment of this Act.

Senator COHEN. I might say for the record that it is becoming a consistent pattern that the administration does not comply with this committee's rule of supplying its testimony at least 48 hours in advance of a hearing. I understand that the reason for that is that the Office of Management and Budget, for some reason, insists upon delaying its consideration of whatever testimony the Department will submit.

However, in the future, if OMB continues to delay, then you should put OMB on notice that the testimony will not be received. Today will be the last day when the Interior Department will be allowed to come before the committee without having its testimony presented at least 48 hours in advance. If that is the fault of OMB, it will have to be their responsibility.

I note that I have had some experience with Indian claims based on the alleged violations of the Nonintercourse Act and note for the record that in the audience today is counsel for the Passamaquoddy Tribe, who was most extensively involved in the Passamaquoddy case—that is, the Passamaquoddy and Penobscot case.

In the 96th Congress, legislation was enacted to settle both the claims in the State of Maine. I am aware of how difficult it can be at times, and indeed divisive. I want to commend the parties who appear here today for their efforts to resolve disputes.

Mr. Coldiron, do you care to appear now?

## STATEMENT OF WILLIAM H. COLDIRON, SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. COLDIRON. Thank you, Mr. Chairman. I will see that OMB receives your message, sir.

We want to thank you, Mr. Chairman, for this opportunity to present the Department of the Interior's position and the administration's position on S. 2294, the Chitimacha Claims Settlement Act. We recommend against enactment of S. 2294.

S. 2294 would provide for the settlement of all Chitimacha land claims in the State of Louisiana. The bill would authorize congressional consent and approval of prior transfers of lands by the Chitimacha Tribe, which the tribe asserts were made in violation of the Indian Nonintercourse Act, which has been codified at 25 U.S.C. 177.

The bill would also extinguish any aboriginal title and any claims by the tribe for damages to, or possession of, land and natural resources. A claims settlement fund in the amount of $7,500,000 would be established to compensate the tribe for the extinguishment of all such claims.

The bill would also authorize an acquisition of land to be held in trust for the tribe and deferral of capital gain taxes for sellers of the land.

Finally, S. 2294 would exclude consideration of payments under the settlement in determining eligibility for certain Federal aid programs.

The bill would settle land claims covered in seven suits filed by the Chitimacha Tribe. The primary claim seeks the recovery of approximately 813 acres, a part of an 1,093-acre parcel of land located in St. Mary's Parish, La., which were confirmed to the tribe by the U.S. Supreme Court in 1852.

A fee patent was issued to the nation of Chitimacha Indians for the 1,093 acres in 1855. Through a series of land sales and lawsuits, the tribe's holdings dwindled to approximately 280 acres by 1919, at which time the remaining lands were taken in trust for the tribe by the United States. Of the 813 acres alienated or lost through adverse possession, none of the transfers were approved by the United States, pursuant to the Indian Nonintercourse Act.

On August 1, 1977, because of the imminent running of an applicable statute of limitations, the Department advised the Department of Justice that the Chitimachas have a credible claim for the recovery of the 813 acres and recommended that suits be filed by the United States on their behalf. Congress later extended the statutory period of limitations and, because of the potential economic disruption to the communities affected by the claims, the Department withdrew its litigation report in 1978 and began to explore the possibility of a legislative settlement.

Several other suits filed by the Chitimacha Tribe seek the recovery of lands outside the confines of the 1855 patent. The tribe has offered deeds and other documentary evidence to show that the lands involved were purchased or patented to various non-Indians and the State of Louisiana and that the sales have never been approved by Congress or, in the case of sales before 1804, by the appropriate Spanish or French authorities.

The Department has never taken a formal position on the merits of these claims. One such suit was dismissed by the U.S. District Court of Louisiana, and that decision has been appealed by the tribe.

Even though, in our opinion, there is no Federal liability for the transactions, the Federal Government has been willing to explore possible solutions to the problem. In 1980, after informal discussions with our Solicitor's Office, the tribe offered, by tribal resolution, to settle for $7,500,000 as an alternative to further litigation of the claims.

As a result of subsequent meetings with departmental officials at that time, the Department directed that appraisals be conducted. The Bureau of Indian Affairs then conducted two appraisals of a tract of approximately 813 acres in St. Mary's Parish and of two parcels—one of 1,023.19 acres and one of 661 acres—in Iberville Parish in south-central Louisiana. The estimated market value of these agricultural lands and property at the time of the appraisals was approximately $4.5 million and $4.2 million, respectively.

While we believe that all parties concerned would agree that a negotiated settlement is preferable to lengthy litigation, we do not have sufficient information at this time to determine whether the $7.5 million would be an appropriate settlement amount. The value of the above land and property was appraised at the current fair market value. Additional research would be required to ascertain the value of the land at the time of taking, plus appropriate interest.

In testimony before this committee on the proposed Ancient Indian Land Claims Settlement Act, S. 2084 and S. 5494, the administration recently supported a formula under which a basis for such settlements can be determined. Compensation would be based on the difference, plus interest, if recognized title is involved, between the fair market value of the land and natural resources at the time of transfer and

what the Indians actually received. A determination would have to be made of the approximate value at the time of the original transfer.

We also believe that the State should be required to bear half of the liability resulting from extinguishment of the claims, primarily because the State and its citizens would be the primary beneficiaries of any settlement and over the years have benefited by private, nontribal ownership of the lands.

Such a settlement framework also foresees that tribes receiving payments could use the money for any tribally determined purpose, including land acquisition on a willing-buyer willing-seller basis.

Consequently, we are opposed to the deferral of capital gains provided for in S. 2294. We believe that section of the Internal Revenue Code should be narrowly construed and thus should not apply to transfers from willing sellers to willing buyers.

Further, we believe it is unfair in this time of fiscal restraint not to take into consideration payments to the tribe or its members made pursuant to the bill for the purpose of participating in Federal financial aid programs. Therefore, we oppose section 8 of the bill.

Based on the foregoing, we recommend against the enactment of S. 2294 at this time.

Meanwhile, we are willing to work with this committee and all interested parties on resolving the claims within the parameters stated above.

At this time, I would like to further inform the chairman and the committee that, since this testimony was originally prepared, the Chitimacha's representatives met with administration representatives to discuss the possibility of resolving their claims on a basis consistent with administration policy. We believe that negotiations may prove fruitful.

Over the weeks ahead we will be earnestly pursuing negotiations with all interested parties.

Shall I answer questions now or go to the remainder of my testimony?

Senator COHEN. If you will defer your testimony for a moment, Mr. Coldiron, we have Representative Tauzin with us, who may want to come forward and testify now.

## STATEMENT OF THE HON. W. J. TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. TAUZIN. Good morning, Senator. Thank you.

Mr. Chairman, the legislation before this committee is identical to that legislation, H.R. 5358, which I have already introduced in the House of Representatives. I introduced it earlier this year.

The legislation is supported by the entire Louisiana congressional delegation, the State of Louisiana itself, the Chitimacha Tribe of Louisiana, and the various defendants in the litigation involved in the claim.

The Chitimacha tribe, which is federally recognized, from time immemorial owned and occupied parts of the present State of Louisiana and were one of the larger aboriginal groups in the State of Louisiana at the time of the original European settlement there. Both the French

and Spanish sovereigns recognized the Chitimachas and their right to the land they occupied.

Moreover, the sovereign protection was carried forth in the Louisiana Purchase Treaty and the Indian Nonintercourse Act, 25 U.S.C. 177.

The Chitimacha Tribe of Louisiana has filed a number of lawsuits in its attempt to assert its tribal land claims and other rights. The lawsuits were brought by the tribe for the purpose of recovering Chitimacha tribal lands and other rights based upon the aboriginal territory and their recognized title.

The respective actions were taken pursuant to French law; Spanish law; the Louisiana Purchase Treaty's article 1S8, article 1S10, article 2, section 2; and article 6 of the U.S. Constitution and the fifth amendment; as well as the Indian Nonintercourse Act, 25 U.S.C. 177.

Unlike other Eastern land claims, the claims are based on the loss of property to individuals, rather than on a taking by the State. The suits are being held in abeyance, pending the outcome of this legislation.

The legislation authorizes the appropriation of $7.5 million for the establishment of the Chitimacha land claims settlement fund. Of this amount, $4 million will be used for the purpose of purchasing additional tribal land for the existing reservation. The remaining $3.5 million will be held in trust by the Secretary for the benefit of the tribe and will be used for its economic development.

The appropriation authorized in the legislation will extinguish all land claims the Chitimachas have in the State of Louisiana and will relieve the economic hardship which has existed for the individuals and businesses as a result of the land claims.

Mr. Chairman, I believe the settlement is fair to all parties; the Chitimacha Tribe, the various defendants, the State of Louisiana, and the landowners' association. Of great significance, the legislation will fulfill our national fiduciary and moral responsibility to the tribe.

I believe it is a fair settlement. I urge the Senate to act as quickly as possible on it.

Thank you very much.

Senator COHEN. I believe you came in after Mr. Coldiron began testifying. He indicated the Department of the Interior's opposition to the settlement itself. You may care to stay.

Mr. TAUZIN. I think I had better stay.

Senator COHEN. Mr. Coldiron, why do you not proceed to your testimony on the second bill. Then we will proceed to questions.

**STATEMENT OF WILLIAM H. COLDIRON (continued)**

Mr. COLDIRON. Thank you, Mr. Chairman.

The Department recommends against the enactment of S. 2719, which is the Mashantucket Pequot Indian Claims Settlement Act.

S. 2719 would provide for the settlement of land claims of the Mashantucket Pequot Indian Tribe of Connecticut, which is also known as the Western Pequot Tribe. The bill would authorize congressional consent and approval of prior transfers of land or natural resources by the Pequot Tribe located within the United States and by any other Indian or tribal entity located within the town of Ledyard, Conn.

The bill would also extinguish any aboriginal title and any tribal claims for damages or possession of land and natural resources. A claim settlement fund in the amount of $900,000 would be established to compensate the tribe for the extinguishment of such claims.

Finally, S. 2719 would extend Federal recognition to the Western Pequot Tribe.

The Connecticut Indians never entered into treaties with the Federal Government, and the Bureau of Indian Affairs has not provided services to them, nor has it exercised any jurisdiction over Indian lands in Connecticut.

Senator COHEN. May I interrupt you there, Mr. Coldiron? That, as a matter of fact, is irrelevant. That is the basis of the suit, not that the Federal Government has not entered into treaties with the tribes or had not provided services. The basis of the lawsuits is that the Federal Government had an obligation under the Nonintercourse Act to protect the land transfers.

Therefore, whether or not they recognize them, or ignored them, or entered into treaties with them, is quite irrelevant in terms of the basis of the lawsuit.

Mr. COLDIRON. We understand that the United States, or at least the Department of the Interior, is not a party to the lawsuit. We know very little about it or the basis of their claims. We do not have them in our files.

We understand that the Connecticut Welfare Department supervises and maintains four small State reservations, including Western Pequot. There are approximately 100 members of the Western Pequot Tribe whose reservation is comprised of 184 acres of land. The reservation is described, and the State's policy and procedures are set forth in chapter 824 of the Connecticut General Statutes.

We oppose S. 2719 for two major reasons. First, extending Federal recognition to the Western Pequot Tribe by legislation would bypass the administrative process established with congressional support for groups seeking Federal acknowledgement. This process was established to provide consideration of petitions under a uniform standard based on systematic and detailed examination of historical evidence. Such a bypassing would set precedent which might encourage similar legislative requests from other groups with pending petitions. A total of 83 petitions for acknowledgement have been filed with the Department. Of these, four have resulted in acknowledgement; three have been found ineligible; and 72 have yet to be processed.

Second, we do not have sufficient information at this time on the particular land claims which this legislation seeks to settle. Consequently, we cannot determine whether the $900,000 is an appropriate settlement amount.

Further, in determining any settlement amount, we would recommend utilizing the formula for compensation which the administration recently supported with suggested amendments in testimony before this committee on the proposed Ancient Indian Land Claims Settlement Act, S. 2084 and H.R. 5454. Thus, any compensation would be the difference, plus interest, if there is a recognized title, between the fair market value of the land and natural resources at the time of transfer and the price actually received.

Further, the State should be required to bear half of the liability resulting from extinguishment of the claims.

The Western Pequot group petitioned for Federal acknowledgement on January 15, 1979, under the Secretary's regulations, and final submission of full documentation is apparently imminent. For some reason, there is presently little available information on file to indicate whether the group could meet the requirements for Federal acknowledgement under the regulations. Therefore, we do not have sufficient information about the group to support the acknowledgement at this time.

Enactment of S. 219 would establish a government-to-goverment relationship between the Western Pequot and the Federal Government and create a Federal obligation to the group without the safeguard of detailed knowledge which would be available if the group's petition for acknowledgement were processed under the regulations.

Even if the Western Pequot's petition were rejected under the regulations, the group would still be able to approach Congress for acknowledgement through legislation. In such an event, Congress at that time could make a decision based on full and accurate anthropological, historical, and genealogical data collected through extensive research.

Based on the foregoing, we recommend against the enactment of S. 2719.

This concludes my prepared statement. I would be pleased to respond to the committee's questions at this time.

Senator COHEN. Thank you very much, Mr. Coldiron.

You appeared before the committee on June 23 of this year to offer testimony in support of S. 2084, which is another ancient land claims settlement bill. The testimony you offered today is consistent to some degree with your statement then. It raises a couple of questions in my mind.

For example, during that hearing, you said that the Eastern land claims themselves are different from one another and should be individually evaluated.

Mr. COLDIRON. Yes, sir. I said that.

Senator COHEN. What do you mean by that?

Mr. COLDIRON. As you have indicated with respect to the suits in Connecticut, they are different from those in Louisiana which you considered this morning.

Also, the claims by the Cayugas in New York are different from the Catawbas' in South Carolina, which we were considering in the prior hearing.

Senator COHEN. I agree with that.

Mr. COLDIRON. Each one of them has its own personality. We have to consider the facts involved in each one of them.

Senator COHEN. I agree exactly, except that after having said that, you then come forward and offer the same formula in each case. In other words, you have a mandatory requirement of a 50-percent settlement on the part of the State.

It may be true on the part of New York: there apparently was extensive correspondence occurring between the State of New York and those jurisdictions involved and the Federal Government of which I was not aware prior to the hearing. There has been virtually no

communication between other States, for example, in the case of the one in which Louisiana is involved.

In the case of the Chitimacha Tribe of Louisiana, they actually took place before the creation of Louisiana as a State. What responsibility does the State of Louisiana have under those circumstances?

Mr. COLDIRON. I believe that in the Louisiana Purchase Treaty, we agreed to recognize land titles as they existed at the time when the land was purchased. That is certainly true in the West; lands which were acquired from Mexico. In those cases, I am quite sure that the treaty provided that the United States would recognize land titles which were in place at the time of transfer to the United States.

If the lands were taken from the Indians prior to the time when the United States illegally took them from the Indians, we should recognize their titles as they existed prior to the time when the United States took over.

Senator COHEN. Whose title should we recognize?

Mr. COLDIRON. I am talking about the Indians' title. If they had good title, it would have been recognized by the French or, prior to that, by the Spaniards.

Mr. COHEN. Then what liability would the State of Louisiana have under these claims?

Mr. COLDIRON. Inasmuch as they have received taxes from them and benefited from the non-Indian ownership all of these years, they have benefited and should be contributing to the settlement. Also, it is their citizens' land titles which they want cleared up. That seems to be the real push behind these cases.

Senator COHEN. Let us look at that in terms of benefit. For example, to what extent have you taken into account, in your opposition to either of the claims, the kinds of contribution which the States may have made because of the Federal Government's neglect of its own trust responsibility?

You are not familiar with some of the facts involved in the Connecticut case, but you are perhaps familiar with those involved in the Maine case. It was settled 2 years ago. In that case, the Maine court, which was confirmed by the circuit court, said that there was a special relationship between the Federal Government and the Maine tribes even though they were not federally recognized Indians. In other words, the Federal Government had a responsibility toward the tribes.

What you said in your testimony on page 3 was, basically, that it is not our problem—there is no Federal liability in these transactions. The Federal Government has been willing to explore on a gratuitous basis. That is not what the courts say.

MI. COLDIRON. The court said that in the Maine case. I agree.

However, there are different claims. For instance, there are vast tracts of land which the Chitimachas claim to which we think they probably have no very serious claim. On the other hand, with respect to the 813 acres which has been involved in court, we think they do have a good claim to that.

Therefore, I do not think that you can say that the U.S. trust responsibility requires it to support any claim which any Indian tribe wants to make for any length of time in any place in the United States. I do not think that is right.

Senator COHEN. I am not suggesting that. It seems to me that you are saying that the Federal Government has not been involved here. This is not our problem.

What if the Chitimacha Tribe were to bring suit against the Interior Department or the Federal Government, the U.S. Congress, and other, and say that we ought to enforce our trust responsibilities?

Mr. COLDIRON. There is such a case before the U.S. Supreme Court right now. The Quinault Tribe in the State of Washington, I believe, is suing for breach of the trust responsibility and the failure to exercise that trust responsibility in its management of timber land over a period of years.

It has been to the Supreme Court once. It was based on whether or not the General Allotment Act waived the sovereign immunity of the United States in order to allow the Indian tribes to bring the suit against the United States for breach of the trust obligation. The U.S. Supreme Court decided that that was not the case and sent it back to the Court of Claims for further proceedings.

The Court of Claims has ruled that the Indians do in fact have a right to sue the United States through other statutes, that is, other than the General Allotment Act. That case is pending before the Supreme Court right now. We may get some further instruction as a result of that case.

Senator COHEN. What actions were taken by the United States to alert the State of Connecticut that the land transfers involved required Federal approval? Were there any?

Mr. COLDIRON. There was the Nonintercourse Act. That is the only one I know of.

Senator COHEN. I know, but what did the Federal Government do to alert the State of Connecticut that the transfers were not in compliance with congressional mandate?

Mr. COLDIRON. As far as I know, they did nothing.

I think that most of these claims arise from inaction by the United States over a period of 200 years.

Senator COHEN. What if the States can show that they made substantial contributions over the course of the last 200 years to the tribes and that they picked up what was otherwise a Federal responsibility? Should that not be taken into account in offsetting what you have suggested?

What you are saying is that they had the benefit of the use of the land. That is why they should pay.

Mr. COLDIRON. Certainly, if the States have been carrying out a Federal responsibility over the years, then that should be considered in mitigation of their obligations and in any negotiations.

Senator COHEN. Therefore, it is not necessarily true that they automatically have to come up with 50 percent of the settlement, no matter what, if they have been carrying out what otherwise is a Federal trust responsibility.

Mr. COLDIRON. I should think that in negotiations, 50 percent could be a negotiable figure.

Senator COHEN. That is a negotiable figure.

Mr. COLDIRON. I think it should be. I have not discussed it with other people in the Department or with other people in the administration. In my opinion it should be.

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Senator COHEN. Has the Interior Department made any analysis of the contributions by the various States: Connecticut or Louisiana?

Mr. COLDIRON. We have had several discussions over a period of time with the Chitimachas, both in the last administration and this administration but not with the States.

Senator COHEN. Would it make a difference, in your opinion, under any of these claims, whether or not the land was secured through fraud or coercion?

Assume, for example, that the tribes received fair market value for the land at that time; that is, when they sold it. Assume that it was still in violation of the Nonintercourse Act, but they received fair market value. Assume that its was secured through fraud or coercion on the part of either the State or individual buyers. Would that make a difference in your interpretation?

Mr. COLDIRON. I do not think so. I think that if the land was illegally obtained, whether it was because of a failure to have it approved by Congress or whether it was secured by fraud or deception and then not approved by Congress, it would not—I do not think that the United States should be held liable for something which happened 200 years ago. I do not think a trustee s responsibility goes that far.

Senator COHEN. I am sorry. I did not understand that.

Mr. COLDIRON. I do not think a trustee s responsibility goes as far as to prosecute people for fraud on the beneficiary's behalf of that many years ago.

If you follow that to the logical or illogical extreme, you should go back and find the person who first perpetrated the fraud and recover back from him.

Senator COHEN. In other words, if there is in fact a trustee responsibility or a fiduciary relationship between the tribes and the Federal Government, what you are saying is that, because of the passage of time, there is no Federal responsibility because of the initial fraud or coercion.

Mr. COLDIRON. I did not say that. I did not intend to in any event.

Senator COHEN. What do you mean? What does 200 years have to do with it?

Mr. COLDIRON. I think that the passage of time is recognized by the law in many, many cases.

Senator COHEN. Let us suppose that the Federal Government breached its fiduciary obligation 200 years ago. Is there a statute of limitations, in your judgment, that after a period of 10, 20, 30, or 100 years, then the responsibility is terminated or the wrong is——

Mr. COLDIRON. The Supreme Court has held that that is not the case. The mere passage of time does not——

Senator COHEN. Then what did you mean about coercion or fraud 200 years ago? How can you not go back and change it?

Mr. COLDIRON. Are you suggesting that there is a difference between a case wherein the land was obtained by fraud, and Congress approved it?

Senator COHEN. No; even if the tribes received fair market value, that would not necessarily mean that no injury was suffered by the tribe itself if it was procured through fraud or duress.

Mr. COLDIRON. I do not think it is a matter of compensation. If they received full market value at the time of sale in the year 1800,

they have not been damaged over the years because they have not been deprived of any of the economic benefit.

If you want to say that we will go back and punish the people who perpetrated the fraud, that is a different proposition.

Senator COHEN. I am saying that, even if they got fair market value at the time but it was procured through fraud or coercion—You are saying that there was no injury to the tribe, but they have been deprived of their land. They received monetary compensation based on market value at that time—we assume that is was monetary compensation—but in law it still says that that is a nonvalid transaction. Is that not correct?

Mr. COLDIRON. There is no damage.

Senator COHEN. There is no damage? If you have been defrauded out of a piece of land, and you received fair market value, you would say that there is no damage.

Mr. COLDIRON. Yes, sir. I think that is true as far as monetary damages are concerned.

A trustee's duty is only to protect the economic integrity of the beneficiary's estate. Let us say that we have a situation wherein they got the land by fraud but paid twice the true market value for it at that time.

Senator COHEN. You say that no damage has been done.

Mr. COLDIRON. I say no damage has been done.

Senator COHEN. Does not the law recognize that such transactions are null and void? Why would they say a transaction is null and void if it is procured through—we know hundreds of thousands of cases wherein someone entered into a transaction for which they got fair market value at a particular time, but the land was procured through fraud or coercion. The courts have always declared them to be null and void and have set them aside.

Mr. COLDIRON. The United States has not breached its trust obligation if it has protected the estate of the beneficiary.

It may be that they would want to set it aside, but if they set it aside on fraud, then the Indians should return the money with interest over the years.

Senator COHEN. You mean what they received originally.

Mr. COLDIRON. Yes; that is true if you set it aside on that basis. We are talking about the Federal Government's involvement because of some breach of our trust obligation at that time, if we did breach it. Then, we should pay.

Senator COHEN. Will you repeat your last statement, Mr. Coldiron?

Mr. COLDIRON. If the claims are based on the fact that the United States had a trust obligation, which we all agree that it does have, then it is that breach of trust which requires the United States at this time to pay.

However, if it has carried out the trust obligation by securing the full value of the property in the estate, or more than the full value, the trustee should not be held liable because it has carried out its trust obligation.

Senator COHEN. How would you get to full value? You would go back and say that at the time of the transaction they got fair market value. Therefore, no damage has been done. Is that your position?

Mr. COLDIRON. Suppose it were a non-Indian case.

Senator COHEN. I want to keep it in the Indian context. It is a special area of the law. I would agree with you if it were not an Indian case. Then we would say that the statute of limitations ran out a long time ago, but that is not what the courts have ruled. Let us keep it within the Indian context.

Mr. COLDIRON. I think that, where the United States has protected the Indians' assets——

Senator COHEN. How so?

Mr. COLDIRON. I mean by securing the full market value. If they got the full market value, they could have put the money in the bank and left it there.

Senator COHEN. We did not secure anything. We did not protect anything. We did not even know about the problem.

You did not know about the tribe in Connecticut or what they are doing. You said that.

Mr. COLDIRON. I do not know what they are doing.

Senator COHEN. How have we secured the assets of the estate?

Mr. COLDIRON. If Congress approved it back in 1800——

Senator COHEN. We did not.

Mr. COLDIRON. I do not know whether they did or not.

I think that not all of these claims are on the same basis. I think that in some cases the Indians have some very good claims. In other cases they have no claim at all.

I think we have to look at each one of the claims to determine the circumstances.

Senator COHEN. If we do that, why do you insist that the State come up with 50 percent of the settlement costs?

Mr. COLDIRON. I say that because they have benefited from having the land and the taxes secured from it.

Senator COHEN. Suppose there were a Federal post office on the land which the tribes now claim?

Mr. COLDIRON. The United States would have to pay for that.

Senator COHEN. I can show you that in the State of Maine there are a lot of Federal buildings all over the land to which the tribes claim they have title. People in Maine did not benefit from that. The Federal Government benefited from that.

I do not understand how the Department can come in and say that these are all individual cases and that we ought to assess them on their merits as far as validity, legitimacy, and nonvalidity are concerned, but also say that the State has to pay half. For what? That, to me, is not a tenable position.

Mr. COLDIRON. I have not discussed this with the people in the Department or anyone else in the administration, but as far as I am concerned the 50-percent figure should be a figure which should be negotiated if the States have in fact made a legitimate attempt over the years to do something about the situation. I think that should be considered as a mitigating circumstance.

On the other hand, suppose a State has been guilty of fraud. Do you think that they should pay more if they have?

Senator COHEN. I do.

Mr. COLDIRON. Then I think you have to——

Senator COHEN. Then we agree. We should not come in here with an arbitrary, automatic provision saying that it is 50 percent which we

will impose. It may be that the State is entirely innocent and ought to contribute nothing to the settlement because it is a Federal responsibility, and the problem arose out of the Federal Government's breach of trust. Maybe that is the case in an individual case.

We ought not to come in and say that there are individual cases but that they have to come up with 50 percent, or we will oppose you.

Mr. COLDIRON. The States ought to contribute something for the benefits they have received if they have received some benefits. I think that, in all of the cases of which I know, they have.

Senator COHEN. How have the States received benefit?

Mr. COLDIRON. In the *Cayuga* case, for instance, I think the State took the land itself and then sold it and made money on it. The State benefited. It went right into the State treasury.

I think you have to look at each one of these on an individual basis. In some cases I do not think there is any question that the State was probably responsible for the transaction and received the money for it.

Senator COHEN. I guess we agree on one thing anyway. That is, that we will assess these on their individual merits.

Mr. COLDIRON. Yes; each one of these should be——

Senator COHEN. Frankly, I am surprised, Mr. Coldiron, that the Department of the Interior is not aware of these cases. This is the first time when you have come before the committee and said that you are not even aware of the tribes, the merits of the claims, or how much the land is worth.

It seems to me that the Department ought to be extensively involved in these negotiations. I would have thought that that was the case.

Mr. COLDIRON. In the Chitimacha case we have made extensive input. The BIA made an appraisal. We have fought settlement with them at length and are still talking settlement with them. We think that we are going to negotiate the Chitimacha claims out.

However, with respect to the Western Pequot, they are still knocking at the door, so to speak. They have not filed any materials with us. We do not have it in the files.

Senator COHEN. That is one of the reasons why I insisted that we have at least 48 hours notice. In your coming before me today, we did not even have your testimony last night so that I could be prepared to examine the basis of your or OMB's disagreements with the settlements. You come before the committee at 9 a.m. and tell me for the first time that you do not know anything about the Connecticut case because you have not been involved.

That is another reason why we will insist in the future that we have access to your testimony at least 48 hours in advance. That is the purpose behind it, namely, so that I can be prepared to ask you intelligent questions on the nature of claims before us.

Mr. COLDIRON. I would be in a better position to give you intelligent answers.

Senator COHEN. Talk to OMB, if you will.

Mr. COLDIRON. Yes. I will see that they get the message.

Senator COHEN. Congressman Tauzin?

Mr. TAUZIN. Senator Cohen, I recall a line often used in western movies. Perhaps they were cowboy and Indian or old Ronald Reagan films. The Indian says at some point in the movie, "White man speak

with forked tongue." If those movies were correct, the language was well deserved in many cases.

I would like to focus upon an element of the dispute called good faith. On July 22, 1980, the Solicitor wrote a letter to Mr. Fred Benton, Jr., pursuant to the negotiations taking place with the Chitimachas regarding the settlement of their land claims. He described to Mr. Benton the outline of what the Department thought would be a fair property settlement of the land claims.

To claim in the last 24 hours that some new formula must be used, when in 1980 the Department stated:

> If the claims can be settled, we would envision settlement legislation along the following lines. It is our policy that land acquisitions and settlement based on Indian claims should be on a willing seller-willing buyer basis.

Is it good faith to have appraised the lands and the properties and then to have suggested to the tribe—at least officials within the Department suggested to the tribe—the very figure which we are using in this legislation. Then, within the last 24 hours, they have come forward and presented some new formula for establishing the basis of the claim. Is that good faith, or are we speaking with forked tongue again?

Is it good faith for the Department to oppose legislation which was drafted precisely along the lines which the Department itself suggested in the 1980 letter, that lands be acquired and taken in trust in settlement and that a separate fund for the development of tribal purposes be established pursuant to the settlement and that this be created by legislation?

Is it good faith for the Department to talk of all kinds of contributions by the State of Louisiana and all kinds of benefit by the State of Louisiana when the Department acknowledged in the settlement suggestion of 1980 that the major impact of taking the land in trust and lodging the reservation, as we propose in the legislation, would be to remove the acquired lands from the tax jurisdiction of the State, that is, from the tax rolls? It would impact on State and local criminal and civil jurisdiction, land use regulation, and eminent domain, as well as other authorities within the Indian reservation.

Moreover, Mr. Chairman, is it good faith, or are we speaking with forked tongue, to come in and state as a blanket rule that in this case and every other case the State ought to provide a 50-percent contribution, as you noted in your questioning, when the Department in the same letter said:

> Since the State of Louisiana, in contrast to the States involved in most of the Eastern land claims, did not play a direct role in the loss of most of the Chitimacha lands, we have not expected a contribution from the State on a scale comparable to the contribution of other States in settlement of Eastern land claims.

They state further:

> As we noted, the State of Louisiana played a relatively minor role in the event which subsequently gave rise to the Chitimacha claim, and we do not expect a large contribution of land or money from the State.

These are the Department's words, Mr. Chairman. They are the Department's words of 2 years ago contrasted with the Department's words today. Are we speaking with forked tongue?

Initially, the Department stated in that letter that the tribe's attorneys had suggested, back in 1980, the possibility of a State con-

tribution in the form of special hunting and fishing rights or a special educational program for the tribe. Louisiana does provide services to the tribe and has been providing educational services and scholarships to the Chitimacha tribe and the reservation, as well as other services, direct and indirect.

The Department recognized that, rather than requiring a contribution of 50 percent in land or money, that there were other ways in which the State of Louisiana benefits the tribe, has benefited them, and can benefit them in the future.

However, today the Department comes forward with a request for a 50-percent contribution based on an entirely new formula, and we learned about the Department's position only in the last 24 hours.

I can understand, although it was an actor acting on screen, the sentiments of the Indian who charged that: "The white eyes speak with forked tongue." I am afraid that we are guilty of that today, sir.

I think that, if we are to maintain the trust relationship which we have with the Chitimachas, if we are to continue to negotiate and settle this claim in good faith, we ought to look back upon the events leading up to the point at which the legislation has been filed. The legislation was filed, I submit again, following precisely the suggestions of settlement made by the Department of the Interior and the U.S. Government itself. I urge that we follow through in good faith in this legislation.

Senator COHEN. Is the letter from which you were quoting, to Mr. Fred Benton by the Solicitor, and is it dated July 22, 1980?

Mr. TAUZIN. That is correct, Senator.

Senator COHEN. Thank you very much, Congressman.

Those are all the questions I have of you, Mr. Coldiron.

Mr. Benton, you may proceed.

## STATEMENT OF FRED BENTON, JR., ESQ., SPECIAL ASSISTANT ATTORNEY GENERAL FOR INDIAN AFFAIRS, STATE OF LOUISIANA

Mr. BENTON. Good morning, sir.

I have a written statement which was prepared in something of a hurry. It is not responsive to the information which I just received from the Solicitor's statement. The written statement from the Solicitor's Office distributed shortly before the meeting unfortunately has a page missing. I listened to the Solicitor when he presented his statement just now but I was unable to read carefully several pages of the material.

I particularly note the material on page 4 which Representative Tauzin so ably covered in his objections.

I will file my statement in the record, but it is not responsive to the 50-percent State contribution requirement. I would like to quote from the Solicitor's statement:

> We also believe the State should be required to bear half of the liability resulting from the extinguishment of the claims, primarily because the State and citizens would be primary beneficiaries of any settlement and, over the years, have benefited from nontribal ownership of the lands.

I think Louisiana may have benefited even more from tribal ownership had we avoided the problem of land claim. I am a little bit puzzled by the phrase "have benefited from the nontribal ownership."

It seems to imply that we have done better by nontribal ownership than if there had been tribal ownership.

In connection with my statement, I would like to emphasize certain points and a series of letters. My four-page typed statement has attached and I offer, produce, and file in evidence before this hearing a series of letters, each marked "Louisiana 1" through "Louisiana 10," inclusive.

Louisiana 1 is a letter from the Solicitor's Office to General Guste, dated July 5, 1979. I would like to particularly emphasize the following language from the Solicitor:

> Based on our experience with other land claims settlements, we believe that a task force could provide an alternative to litigation of the Chitimacha claims. We are informed that a number of the defendants, the tribe, and Members of Congress are interested in exploring settlement possibilities. Naturally, State support and participation is necessary in any settlement negotiation. I am, therefore, writing today to ask whether the State of Louisiana would like to participate in a settlement.

Of course, Louisiana did determine that it should participate in a settlement undertaking. It was a good policy.

My point is this: We relied on the approach suggested by the Solicitor in acting on this and other Indian land claim matters. There are other matters in progress right now, on which we have relied in good faith. For example, in the Tunica-Biloxi matter, the tribe was recognized on September 25, 1981. That was final recognition by the BIA under 25 CFR 54. We have some very substantial legal questions regarding such recognition. We said that we did not waive our legal rights but Louisiana decided not to file suit. We reserved our rights, but there is no doubt that, from a lawyer's standpoint, there is a severe prejudice in not asserting rights on or before recognition under 25 CFR 54. We relied heavily upon the position of the Solicitor's Office as enunciated in the Chitimacha matter, to help us move land claim settlement problems along in the context of negotiation.

We observed and participated in all communications with the State of Maine and other offices of attorneys general in other States, where land claim litigation and negotiation was in progress. We watched what was happening in those States.

The observations were communicated to Attorney General William Guste of Louisiana. He communicated with Governor Treen. They—the Governor and the general—made a very deliberate, thoughtful, careful decision in the Tunica-Biloxi recognition matter, based upon our dependence upon the Solicitor's representations and actions in the Chitimacha case.

We respectfully submit that we would like—I think that I heard Mr. Coldiron say today that he wanted to continue negotiations. We certainly urge and support movement in that direction.

We definitely need to proceed with negotiations right now. For example, given the point of negotiation of the Tunica-Biloxi matter, a settlement figure could be very, very expensive. We need the advice of the experts in the Solicitor's Office to help prepare the necessary technical documents. We have depended heavily upon the position of the Solicitor to negotiate these matters.

This was not within the context of 50–50. That was not part of the deal.

I am quoting from this letter, Louisiana 1. I will move right along and conclude my remarks because I know that you have a lot of ground to cover here, and you need to get to something else.

Because the tribe has already initiated litigation, it is imperative that the task force be set up with a minimum of delay. We, therefore, request that the State determine as soon as possible whether it desires to participate in such task force.

I offer that as Louisiana 1.

Louisiana 2 is referred to in my statement.

Louisiana 3 is the July 22 letter quoted by Representative Tauzin. I think that we should note the language on page 1:

On August 1, 1977, this Department informed the Department of Justice that the Chitimachas had a credible claim to the 813 acres and requested the institution of a quite title and trespass action. We subsequently withdraw our litigation request in order to allow the parties to pursue settlement possibilities.

There is no doubt that the thinking in the Solicitor's Office has progressed far afield in this case. We hope that whatever additional studies need to be made, may be completed and that we may see the case moved forward and set a good example for the lawyers in the other cases. If the Tunica-Biloxi lawyers do not see some progress, they will probably sue a large additional group of landowners in Louisiana.

The Tunica-Biloxi lawyers are facing a prescriptive deadline coming up on December 31, 1982. If we do not continue to demonstrate good faith and continue to move land claim settlement negotiations along, I think the lawyers will have to decide whether or not they should sue large additional groups of landowners in Louisiana.

I detect a drawing back and a reluctance of people in the Bureau of Indian Affairs and in the Solicitor's Office to help us with the same degree of enthusiasm which we saw a few months ago. That is bad.

I have written to the Louisiana congressional delegation and have called this to their attention. At the last negotiating session of the Tunica-Biloxi situation, the Bureau gentleman did not appear. He took the initiative in setting up that meeting. However, he did not appear at the negotiating session.

I see here today obvious signs that there is a change in policy.

My testimony is to the effect that we have relied upon the prior positions of the Bureau and of the Solicitor's Office. We have taken substantial steps effecting the lives and property of thousands of people.

Of course, General Guste is concerned with all of the people of Louisiana, both Indians and non-Indians. As good lawyers, we must do the right thing. We have acted in this case in reliance upon the policy demonstrated to us through the Chitimacha case.

I quote from page 2 of Louisiana No. 3, dated July 22, 1980: "It is the policy of the Department to seek legislative solutions, rather than litigation of Eastern land claims."

I quote this: "Since the State of Louisiana, in contrast to the States involved in most Eastern land claims, did not play a direct role in the loss of most of the Chitimacha lands, we have not expected a contribution from the State on a scale comparable to the contributions of other States in the settlement of Eastern Indian land claims." What did the Solicitor tell Louisiana in this statement?

There is a lot of history behind this. My point is that after the Louisiana Purchase in 1803, Louisiana was made subject to a number of land claims acts of Congress establishing the land claims commissions. The land claim commissions under the acts were quasi judicial bodies which received evidence and passed upon the validity of titles to lands. We find that, over the years, the rights of the Indians were involved in a process that had a direct relationship between Congress and the tribunals established. The results and findings established by these tribunals were confirmed by acts of Congress.

If you read the briefs by the lawyers on both sides of the Chitimacha cases, you can see that the land claims acts application and effect is a central point of the pending appeals.

The point I want to emphasize is the Federal relationship involved in the process of validating land titles following the Louisiana Purchase in 1803.

I have a history book which indicates that, following the Louisiana Purchase, there was a practice of some people going to former Spanish officials to purchase false papers indicating acquisition of lands prior to the Louisiana Purchase. This is the sort of thing which presents an opportunity for claims with an appealing equitable basis. This has nothing to do with this case. It has something to do with my concern in other cases and that we get all Louisiana cases settled.

I think that we can have in future years more serious problems develop in terms of what types of national administration we have and how far they may lean to the left or the right. We could actually have some land losses. I think we need to get on with this matter and get all Indian land claims settled as a matter of National policy.

If we think in a very conservative manner, the private landowner should be protected by the Federal Government. We do not want to give away Uncle Sam's money wastefully but we had better go back and look at some of these claims; that is, the claims with real merit. I agree with Solicitor Coldiron. We do not want to give away Uncle Sam's money on any kind of story which is dreamed up.

However, when we have a solid historic background, as we see in the Chitimacha case and some of the others, I think it behooves us to attempt to settle the cases at a fair and reasonable figure.

When I hear a figure of $7.5 million for several years, based on what the Solicitor's Office, itself, has said about it, I say that it looks like a pretty good deal. Let us try and wrap it up without fooling around with it too much longer. We are liable to see the figure slide off into the deep end and cost us a lot of money.

I do not want to take any more of your time. Representative Tauzin pointed out this language—There is language in the letter I file herewith, Louisiana No. 3, dated July 22, 1980, in which the Bureau and the Solicitor's Office has evaluated the Chitimacha claim and came to the conclusion that they do not agree with the $7.5 million, but it is obvious that they are not very far from that figure. The Solicitor and the BIA took the initiative to suggest that figure.

I urge that diligence on their part would dictate that, if they have not studied the present bill before the Senate Committee enough, they should complete their studies soon. They should move forward and get the figures in hand so that we do not see the case delayed very much longer. I think it is a dangerous liability. It obviously has involved a

great deal of expense to private landowners, innocent third party landowners, who, I think, are entitled to be protected by the United States of America and by Louisiana.

One of my filings sets out what Louisiana has been doing for its Indian people. Representative Tauzin asked for this material some months ago. We filed an outline of all Louisiana Indian assistance programs or types of expenditures for Indian people.

We have one more thing of interest. I will only take about 2 seconds. Roy and Sadie Pohler are collectors of Indian artifacts. They have made a marvelous collection of artifacts on Indian history. I would like to hand to you and let you look at pictures of their collection which they have donated to the State for inclusion in an Indian history and cultural preservation museum or center.

If we can proceed with these settlements and get them worked out the new museum could be a part of the settlement. The portion of the collection donated to the State is appraised at about $400,000. Roy and Sadie Pohler have another $1 million of artifacts to add to the museum. We are working toward the idea of a State cultural resource center which woud emphasize the role played by American Indians in the history of Louisiana and the Mississippi Valley in the United States.

The chief of the Chitimachas and I happened to be on the airplane last night. He recognizes—he is a remarkable man—that in another 80 years it will be hard to distinguish Indian children from anyone else down there. Indian children will have to go and see and learn about their history. We think that this type of museum cultural center is very valuable.

I ask that you glance at the photographs of Roy's and Sadie's donations and see that we are working in good faith; that we are trying to do things in support of our Indian people and their aspirations.

We would like to see this claim settled. We will do our part to try and get it done.

Senator COHEN. Thank you very much.

Without objection, your complete statement and the material you supplied will be inserted in the record at this point.

[The prepared statement follows. Testimony resumes on p. 59.]

PREPARED STATEMENT OF FRED BENTON, JR., ESQ., SPECIAL ASSISTANT ATTORNEY GENERAL FOR INDIAN AFFAIRS, STATE OF LOUISIANA

PART I

My name is Fred Benton, Jr., and I am an attorney at law, with offices at 601 St. Ferdinand Street, Baton Rouge, Louisiana 70802, telephone 504/343-6611 (home, 504/766-3201).

I serve pro bono as Special Assistant Attorney General in connection with Indian matters in Louisiana, under the Honorable William J. Guste, Jr., Attorney General. Prior to my appearing here today, I consulted with General Guste's office, through his First Assistant, going over, generally and briefly, the nature of my comments to be made. I also presented the same general information to Mr. Cyrus Creco, counsel for Governor David C. Treen.

Louisiana is heavily relying on the settlement of Indian land claim matters in the manner proposed by S. 2294, not only in connection with the Chitimacha Tribe of Louisiana but, also, the Tunica-Biloxi, as well as possibly other land claim matters that are currently in the process of negotiation.

When I refer to the word "rely", I mean that Louisiana has elected to defer, if not waive, certain substantial legal rights in connection with the recently completed recognition of the Tunica-Biloxi Indian Tribe. We adopted, as a mat-

ter of State policy in that care, the theory that litigation should be avoided and, therefore, the recognition process was permitted to proceed without contest on certain very serious legal questions on the basis that the Tunica-Biloxi land claims would be settled through acts of Congress, without the necessity for costly and unnecessary years of litigation affecting innocent third party landowners. Our decision in the Tunica-Biloxi case was predicated on experience in the Chitimacha matter. In the Chitimacha care, the opportunity for a settlement was first suggested by Mr. Leo M. Krulitz, Solicitor, by his letter of July 5, 1979, a copy of which is hereby presented and marked as "LA No. 1".

On April 15, 1980, further advice was received from the Department of the Interior, Office of Solicitor, indicating that a settlement seemed to be possible. For the record, I would like to offer a letter of April 16th from me to General Guste, outlining the substance of a call from the Department of the Interior of April 15, 1980, and mark that "LA No. 2".

By letter of July 22, 1980, Mr. Leo Krulitz, Solicitor, wrote to me pertaining to the possibility of settlement with the Chitimacha Tribe of Louisiana. A copy of the Solicitor's letter is annexed hereto as "LA No. 3".

A copy of the Solicitor's letter of July 22, 1980, was promptly forwarded to General Guste, with the recommendation that he approve the idea of undertaking negotiations and Louisiana's participation therein. General Guste determined that he should first obtain Governor Treen's approval for any such course of action.

A suggested form of letter to the Governor was drafted, approved by the General and sent along to the Governor's office. See draft marked "LA No. 4", dated August 6, 1980, presented herewith.

A letter to General Guste was written on August 22, 1980, inquiring of the status of the matter with the Governor, which is attached hereto "LA No. 5", dated August 22, 1980.

A letter was written to Dennis Daugherty, Office of the Governor, Federal Relations, of September 15, 1980, inquiring of the status of the Governor's review of the matter. A copy of this letter is annexed hereto as "LA No. 6".

On September 19, 1980, General Guste wrote a letter to me ("LA No. 7"), in which he says:

"For ready reference, I attach a copy of a letter from Governor David C. Treen, dated September 10, 1980, authorizing us to institute settlement negotiations with regard to land claims of the Chitimacha Tribe.

"I believe the letter is self-explanatory, and you may proceed to negotiate within the parameters suggested in the letter."

The letter from Governor David C. Treen, attached to General Guste's letter of September 19, 1980, is filed herewith and marked as "LA No. 8."

Governor Treen's letter outlines several basic points which are essential to his agreement to proceed with the negotiation procedure:

"1. I would hope that any such settlement agreement would resolve all potential Chitimacha land claims, not just the eight hundred thirteen acres claimed in the Gilbert Smith suit . . .

"2. I would not want the State to prejudice the rights of any private parties to the Chitimacha suits.

"3. Mr. Benton tells my staff that the tribe supports the proposed settlement and the landowner defendants will not be asked to contribute to the settlement."

On September 22, 1980, I wrote to Mr. Leo Krulitz, Solicitor, advising him of General Guste's and Governor Treen's position. Copies of these letters were also provided Mr. Tim Vollman, Assistant Solicitor. Copies of these letters are marked as "LA No. 9" and filed herewith.

On August 10, 1981, a request of the Bureau of Indian Affairs was made, through Mr. Guy J. D'Antonio, to supply Ken Smith, Assistant Secretary for Indians Affairs of the Department of the Interior, a brief outline description of what Louisiana is doing with respect to the settlement of land claim matters pertaining to the Chitimacha Indian Tribe. After consultation with the Governor's Commission on Indian Affairs, a letter was prepared, directed to Ken Smith, dated August 11, 1981, containing such information. A copy of the letter is filed herewith as "LA No. 10".

Supplemental to the letter of August 11, 1981, I would like to make reference to the donation and receipt of donation of the Roy and Sadie Pohler Foundation to the State, now in the process of being completed. The donation consists of artifacts and historic items of interest, including pottery and projectile points, extending back over a period of more than ten thousand years of human occu-

pancy of the Lower Mississippi Valley, including Louisiana. Mr. and Mrs. Pohler have further indicated that in the future they may donate additional portions of their extensive collection to a Statewide project, which would strongly involve Indian peoples of Louisiana in a program to expand public knowledge and appreciation of the contribution made by Indian peoples to the history of the United States. The donated portion of the collection has been appraised at a figure of approximately $400,000. It is hoped and anticipated that the collection will be utilized for the establishment and/or expansion of Indian museums, traveling exhibits and other related projects possibly situated in the Tunica Hills preservation area referred to in the letter of August 11, 1981, to Ken Smith.

PART II

From a review of Part I foregoing, it is apparent that Louisiana is prepared and ready to assist in the settlement of the Chitimacha land claims within the guidelines set out by Governor Treen and General Guste. The Chitimacha settlement affects not only an extensive number of landowners involved in the pending Chitimacha litigation, but, also large potential additional numbers of landowners who could be affected by litigation arising out of the Tunica-Biloxi claims. Accordingly, it is my testimony that Louisiana, as a matter of policy, strongly supports a reasonable, prompt and appropriate settlement agreement with the Chitimacha with the view that further destructive and costly litigation be avoided.

Nothing herein contained shall be construed, or is intended to constitute acknowledgment or implication that any of the claims asserted by the Chitimacha or Tunica-Biloxi have been evaluated and that the State has formed any opinion as to the merits or demerits of the claims, but to the contrary, all rights of the landowners and of the State are fully reserved. Within this context, Louisiana, as a matter of policy, strongly supports reasonable and appropriate settlement agreements of the character sought to be achieved in the Chitimacha land claim matters as opposed to destructive and costly litigation.

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STEVE H. BENTON

TELEPHONE (504) 343-6611

July 19, 1979

Hon. William J. Guste, Jr.
Attorney General, State of Louisiana
234 Loyola
New Orleans, Louisiana

Dear General Guste:

This will confirm my telephone call to you (through Mrs. Cullen) today. You have received a letter from the Department of the Interior, Office of the Solicitor, inviting the State to participate in a task force seeking a settlement of the Chitimacha land claims in Louisiana. I recommend that you accept this invitation.

The letter you received from the Department of the Interior was signed by Leo M. Krulitz, Solicitor, and was dated July 5, 1979. The Solicitor asks that the task force be set up "with a minimum of delay". Because of the passage of time, I recommend that you call or write the Solicitor and indicate to him your acceptance on behalf of the State as a participant in the task force. Such a participation would not constitute an acknowledgment that any of the claims asserted or denied have merit, or that you are passing judgment on any of the factual or legal issues of the pending cases. Essentially, your action would be to permit the federal task force to move forward presumably with federal funds. You would want to watch the work of the task force and settlement proceedings closely to be certain that a precedent is not established that would impair the rights of the State or private landowners as was proposed in the State of Maine matter.

Sincerely yours,

Fred G. Benton, Jr.

carbon copy:

Hon. William J. Guste, Jr.
Attorney General, State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

fgbjr/b

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Honorable William J. Guste, Jr.
Attorney General of the State of Louisiana
Department of Justice
State Capitol
Baton Rouge, Louisiana 70804

JUL 5 1979

Dear Mr. Guste:

I am writing today in regard to certain land claims of the Chitimacha Tribe of Louisiana. To date the Tribe has filed three suits to recover lands allegedly taken from the Chitimachas without compliance with the Indian Non-Intercourse Act, 25 U.S.C. §177. These suits may be divided into two classes. Chitimacha Tribe of Louisiana v. Gilbert Smith, Civ. No. 790493 (W.D. La.) seeks the recovery of approximately 813 acres, a part of an approximately 1,000-acre parcel confirmed to the Tribe in Chitimacha Indians v. United States, 131 U.S. lxx (1852). A patent to the Tribe was issued by President Franklin Pierce in 1855. Through a number of 19th century transactions the 813 acres were alienated, leaving only the present Chitimacha reservation in Charenton. This Department has advised the Department of Justice that the Chitimachas have a credible claim for the recovery of the 813 acres.

Chitimacha Tribe of Louisiana v. Harry Laws, Inc., Civ. No. 77-772-L (W.D. La.) and Chitimacha Tribe of Louisiana v. A. Wilbert Son's Lumber Shingle Co., Civ. No. 79-184 (M.D. La.) seek the recovery of lands outside the confines of the 1855 patent. The Tribe has discovered deeds and other documentary evidence showing that the lands involved were bought from the Chitimachas by various non-Indians and that the sales have never been approved by Congress, or in the case of sales before 1804, by the appropriate Spanish or French authorities. Our preliminary investigation of these claims suggests that the Chitimachas may well have rights to lands outside the confines of the 1855 patent.

It is the policy of the Department of the Interior to explore the possibility of a legislative settlement as an alternative to litigation of eastern Indian land claims. The Narragansett claim in Rhode Island has been settled through legislation. Similar negotiations are proceeding in the Catawba, Passamaquoddy, Penobscot, Cayuga and St. Regis Mohawk claims. In 1977, because of the imminent running of an applicable statute of limitations (28 U.S.C. §2415) this Department had recommended to the Justice Department that suits be filed by the United States on behalf of these tribal

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claimants--including the Chitimachas. Congress later extended the statutory period, and because of the potential economic disruption to the communities affected by these claims, we withdrew our litigation reports and devoted our efforts to the development of amicable settlements.

In the Cayuga and St. Regis Mohawk claims this Department has sought to facilitate the settlement process through the creation of settlement work groups consisting of representatives of this Department, the tribes, the State and the Senators and Congressmen within whose Districts the claims are located. Although the Cayuga and St. Regis claims have not yet been settled, we are pleased with the progress made by the work groups so far and are hopeful that legislative settlement proposals will be submitted to Congress this year.

Based on our experience with other land claims settlements, we believe that a task force could provide an alternative to litigation of the Chitimacha claims. We are informed that a number of the defendants, the Tribe, and Members of Congress are interested in exploring settlement possibilities. Naturally, State support and participation is necessary in any settlement negotiation. I am therefore writing today to ask whether the State of Louisiana would like to participate in a settlement. I should state that the purpose of the task force will be to explore settlement possibilities and formulate a legislative proposal to be submitted to Congress. The United States has no specific proposal to submit to a task force at this point, but wants to explore alternatives and formulate a proposal together with the other participants.

Because the Tribe has already initiated litigation, it is imperative that the task force be set up with a minimum of delay. We therefore request that the State determine as soon as possible whether it desires to participate in such a task force. We look forward to your response.

Sincerely,

LEO M. KRULITZ

SOLICITOR

bcc: Chitimacha Tribal Counsel

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TELEPHONE (504) 343-8611

April 16, 1980

Hon. William J. Guste, Jr.
Attorney General
State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

CONFIDENTIAL

Dear General Guste:

Bruce Landon, Department of the Interior Attorney Adviser, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D. C. 20240, telephone no. (202) 343-9331, advised on Tuesday, April 15, 1980, that the Chitamacha Indian Tribe of Louisiana has approached Interior for an overall settlement of its three claims now pending in Louisiana. The Department of the Interior has taken the position that the Chitamacha claim for 813 acres is credible, but is taking no position on the other two claims. The Department, in accordance with past practice, is interested in bringing about a settlement for which primary financial responsibility would be assumed by the United States. Payment for the 813 acres would be in accordance with the appraised value of 813 acres. This particular tract has no oilfield and consists of sugarcane fields. The moneys would be used by the United States Government to purchase additional lands adjacent to the existing Chitamacha reservation.

The Department of the Interior would not undertake a settlement of the Chitamacha claims except with the concurrence and cooperation of the State of Louisiana. Such a settlement would involve cost to Louisiana. For example, the acquisition of lands to be placed in trust for the use and benefit of the Chitamacha Tribe would remove such lands from the tax rolls for local ad valorem tax purposes. The Department would additionally expect some State contribution -- not in a lump sum, perhaps in the educational field, perhaps partially in the establishment of hunting and fishing rights.

At the present time, the Department of the Interior is approaching completion of the appraisal of the 813 acres in response to the contact by the Tribe. No approval has been given by the Department of the Interior to the Chitamacha's request for a settlement.

The Tunicas are still in the recognition process, and until and unless they are found to constitute a "Tribe", the Department will continue to exercise no authority toward seeking an overall settlement of the Tunicas' land claims in Louisiana.

I requested that Mr. Landon write a letter with respect to the foregoing.

If you have any questions I can help with, please call me.

Kind personal regards.

Sincerely yours,

Fred G. Benton, Jr.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

JUL 22 1980

Mr. Fred G. Benton, Jr.
Benton, Benton & Benton
601 St. Ferdinand Street
Baton Rouge, Louisiana 70802

Dear Mr. Benton:

This is to confirm your telephone conversation with Bruce Landon of our office regarding the possibility of a settlement of the land claims of the Chitimacha Tribe of Louisiana. Please excuse the delay in this confirmatory letter, but we believed it advisable to wait until we had received an offer from the Chitimacha Tribe before writing to you.

As you know, the Chitimachas have raised a number of land claims in southern Louisiana. Chitimacha Tribe of Louisiana v. Gilbert Smith, Civil Action No. 790493 (W.D.La.) is a claim for approximately 813 acres in the vicinity of the present Chitimacha Reservation. A tract including both the 813 acres and the present reservation was confirmed in the Tribe in 1852 by the Supreme Court. United States v. Chetimachas Indians, 131 U.S. lxx (1852) [published in 1889]. President Pierce patented the lands to the Chitimachas in 1855. The 813 acres were subsequently lost through state partition orders, sheriff's sales and conveyances by individual members of the Tribe. None of these transactions was approved by the United States pursuant to the Indian Nonintercourse Act, 25 U.S.C. §177. On August 1, 1977, this Department informed the Department of Justice that the Chitimachas had a credible claim to the 813 acres and requested the institution of a quiet title and trespass action. We subsequently withdrew our litigation request in order to allow the parties to pursue settlement possibilities.

The Chitimachas also claim lands outside the limits of the 1855 patent. Chitimacha Tribe of Louisiana v. Harry L. Lewis Co., Inc., Civil Action No. 770772 (W.D.La., filed July 15, 1977) (for approximately 5,000 acres in the vicinity of the reservation) arises out of transactions between the Chitimachas and non-Indians before the Louisiana Purchase. Those transactions were never approved by the Governor, as required by Spanish law. The Department has never taken a position on this claim.

On April 24, 1980, Judge Davis of the United States District Court for the Western District of Louisiana granted summary judgment in favor of the

defendants in the Harry L. Laws Co., Inc., case. The opinion appears to have two bases. First, that the tracts involved were confirmed to non-Indians pursuant to the Louisiana Land Claim Acts in a manner which extinguished any Indian title to the lands. Second, that the Louisiana Land Claim Acts extinguished all Indian title in the Louisiana Purchase not claimed by the various Tribes under those Acts. The Tribe has appealed that decision. It should be noted that the United States has opposed the second basis for Judge Davis' holding in previous litigation.

Chitimacha Tribe of Louisiana v. A. Wilbert Son's Lumber and Shingle Co., Civil Action No. 79-184 (M.D.La., filed April 6, 1979) involves approximately 800 acres in Iberville Parish. This claim arises out of transactions both before and after the Louisiana Purchase. On the Tribe's motion the court dismissed this suit without prejudice on June 25, 1980. The Tribe's counsel has told us that this was intended as a gesture to the defendants that the Tribe is serious about settling its claims.

Finally, the Chitimachas have filed four defendant class actions. Chitimacha Tribe of Louisiana v. David L. Ensminger, Civil Action No. 800638 (W.D.La., filed April 24, 1980); and three cases entitled Chitimacha Tribe of Louisiana v. E. Langdon Laws, Civil Action No. 800837 (W.D. La., filed April 24, 1980), Civil Action No. 80-1483 (E.D.La., filed April 24, 1980), Civil Action No. 80-232 (M.D.La., filed May 12, 1980). These suits cover the entirety of the Chitimacha aboriginal range. The basis for the claim is unclear.

As you can see, the various Chitimacha claims differ widely from each other both factually and legally. It is the policy of this Department to seek legislative solutions rather than litigation of eastern Indian land claims. On several occasions we have attempted to initiate settlement negotiations on the Chitimacha claims. However, the wide disparity between the total Chitimacha claim areas and the 813-acre tract on which we have taken a supportive position has rendered these efforts unsuccessful in the past.

Former settlement offers from the Tribe have been linked to the value of claim areas both inside and outside of the 1855 patent. The defendants outside of the 1855 patent area have been unwilling to offer any substantial sum to settle those claims. Since the State of Louisiana (in contrast to the states involved in most of the eastern land claims) did not play a direct role in the loss of most of the Chitimacha lands, we have not expected a contribution from the State on a scale comparable to the contributions of other states in the settlement of eastern Indian land claims. Earlier settlement proposals of the Tribe would, therefore, have required the expenditure of excessive amounts of federal moneys, not

matched by outside contributors, to settle land claims on which this Department has not taken a supportive position.

This spring the Tribe's attorneys approached us with a settlement suggestion linked to the value of the 813 acres. The suggestion would essentially entail the purchase by the United States of the 813 acres or equivalent acreage for the Tribe. In exchange for the purchase of the 813 acres, plus perhaps a land development fund, the Tribe would relinquish all of its claims. Since the suggestion was linked to the value of the 813-acre claim rather than all of the claims, we believed that settlement possibilities had markedly increased.

The Bureau of Indian Affairs appraised the surface estate and improvements in the 813-acre claim area at $4,320,000. The subsurface estate was appraised by an outside contractor at $160,000. By Tribal Resolution dated May 19, 1980, the Chitimacha Tribe offered to settle all its claims for $7,500,000. Although this figure exceeds the value of the 813-acre claim area, it was accompanied by new information in support of the claims outside the 813-acre claim. Regardless of the merits of the other claim, we view the $7.5 million offer as rather high when compared to the funds provided for in other settlement agreements. Nonetheless, we are currently studying both the merits of new claims and the feasibility of a federal contribution to settlement from a budgetary and policy standpoint.

If the claims can be settled, we would envision settlement legislation along the following lines. It is our policy that land acquisitions in settlement of eastern Indian land claims should be on a willing seller/willing buyer basis. We, therefore, would not envision the condemnation of the actual 813 acres within the 1855 patent, but the establishment of a fund for the acquisition of lands within a reasonable distance of the present Chitimacha Reservation. Lands so acquired would be taken in trust by the United States for the Tribe and made a part of the Chitimacha Reservation. In addition a fund for development and other tribal purposes may be established. This depends, of course, on what is agreed upon as an appropriate federal monetary contribution to the settlement. The major impact of taking land in trust and enlarging the reservation would be to remove the acquired lands from the tax rolls. There would also be some impacts on state and local criminal and civil jurisdiction, land use regulation and eminent domain authority within the enlarged reservation. However, all of these impacts may be minor compared to the disruption which may ultimately be caused by the land claim litigation itself.

Negotiated settlements of other eastern Indian land claims have generally included contributions from states or major landowners. As we noted above, the State of Louisiana played a relatively minor role in the events

which gave rise to the Chitimacha claims, and we do not expect a large contribution in land or money from the State. Nonetheless, we believe that a contribution on the part of the State would facilitate passage of the settlement legislation by demonstrating a State commitment to such a solution. Further the State appears to own some roads and to have some lands acquired pursuant to the Swamp Land Act within the claim areas. The Tribe's attorneys have suggested the possibility of a State contribution in the form of special hunting and fishing rights or a special educational program for the Tribe. We would be interested in getting the State's reaction to such a contribution or alternative contributions.

We hope this letter has been useful in bringing you up to date on the possibilities of settlement. Although the Department has not yet taken a position on whether it can support the Tribe's offer, we are anxious to receive any reaction which you and Attorney General Guste may have to the settlement proposal outlined in this letter. State support is invaluable to the passage of any settlement legislation, and we are therefore seeking your input at this early stage. We look forward to hearing from you and will, of course, keep you informed of further developments as they occur.

Sincerely,

SOLICITOR

cc: Chitimacha Tribe of Louisiana
D'Antonio, Hose & Stansbury

August 6, 1980

Hon. David Treen
Governor of the State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

Dear Governor Treen:

There are several potential Indian land claim cases in Louisiana that I have been watching over a period of three or four years, that could prove to be highly prejudicial to large numbers of people, unless handled properly. You may recall that such an unfortunate situation developed in the State of Maine.

Difficulties can be avoided by working out a settlement agreement whereunder the United States pays most of the cost. The Department of the Interior will not undertake settlement negotiations unless the state involved is in agreement.

I have asked Fred Benton, Jr. to monitor Indian land claim matters for me, and he recently received a letter, dated July 22, 1980, with respect to the Chitimachas Tribe of Louisiana (copy of letter enclosed). In substance, the letter indicates a possible favorable climate in which to settle all the Chitimachas Tribe land claims in Louisiana. Fred Benton recommends that I give a favorable response to the Department of the Interior inquiry. I am disposed to accept this recommendation and permit the Department of the Interior to move in the direction of a settlement agreement involving the State. However, before undertaking such action, it is appropriate that you be fully advised and indicate your agreement with and support for this course of action. At some point in the future, it will become necessary for the State of Louisiana to make a contribution to the settlement agreement, as shown. According to the letter of July 22, 1980, the State's contribution in the Chitimachas case would seem to be modest in amount.

It is my appreciation and understanding that the settlement proposed by the letter of July 22, 1980, would be in the best interest of the peoples of the Chitimachas Tribe, as well as a number of private landowners whose titles to property are currently in litigation or threatened by outstanding claims. If you approve the undertaking of a settlement approach to the Chitimachas land claim, please indicate such concurrence by signing a copy of this letter and returning to me.

I would anticipate that you would be kept fully informed of each step I would take, and your input during the course of these proceedings would always be welcome.

Sincerely yours,

William J. Guste, Jr.

enclosure

I approve the course of action outlined above.

_____

David Treen, Governor of the State of Louisiana

August 22, 1980

Hon. William J. Guste, Jr.
Attorney General of the State of Louisiana
234 Loyola
New Orleans, Louisiana

Re: Chitamachas Land Settlement

Dear General:

Our friends in the Bureau of Indian Affairs called again today and informally inquired about the results of your communique with the Governor. I advised that up to this time you probably have not received a reply. They indicated that they would like to be in a settlement decision-making mode in the early part of September. Accordingly, I urge that you call the Governor and suggest to him that his concurrence in giving a favorable nod to the Feds to proceed with settlement negotiations should be given. From my communications with the United States Government it would be correct to assure him that the extent of State financial responsibility in the settlement agreement negotiations would be an educational program for the reservation and waiver or partial waiver of fishing license fees for the Chitamachas.

Another area of concern is the removal of land from tax rolls and transfer of jurisdiction from State and local control to Federal Indian reservation jurisdiction. In other states, these points have generated an emotional issue locally. In the present case, an approach by the Feds or the Chitamachas to the parish officials, including the District Attorney and the Assessor, could determine if there would be any possible objection. The Chitamachas have had a Federally recognized reservation for some time, and without making inquiry, we can reasonably assume that the Sheriff and District Attorney have a working arrangement with the reservation, and the addition of 800 to 1,000 acres to the reservation would not on its face seem to be much of a change from the present situation.

Sincerely yours,

Fred G. Benton, Jr.

carbon copy:

Hon. William J. Guste, Jr.
Attorney General, State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

fgbjr/b

September 15, 1980

Mr. Dennis Dougherty
Office of the Governor, Federal Relations
State Capitol Building
Baton Rouge, Louisiana

Dear Mr. Dougherty:

It has been some time since the communique from the Bureau of Indian Affairs was received with respect to possible settlement efforts by such Bureau in connection with the Chitamacha land claim matters in Louisiana. Please do what you can to rule on this item. General Guste should advise the people in Washington soon, as to Louisiana's posture on settlement negotiations.

Sincerely yours,

Fred G. Benton, Jr.

fgbjr/b

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

September 19, 1980

Mr. Fred G. Benton, Jr.
Attorney At Law
601 St. Ferdinand Street
Baton Rouge, Louisiana 70802

Dear Mr. Benton:

For ready reference, I attach copy of letter from Governor David C. Treen, dated September 10, 1980, authorizing us to institute settlement discussions with regard to land claims of the Chitimacha Tribe.

I believe the letter is self-explanatory and you may proceed to negotiate within the parameters suggested in the letter.

Yours very truly,

William J. Guste Jr.

WILLIAM J. GUSTE, JR.

WJG,Jr/sl

Enclosure

DAVID C. TREEN
GOVERNOR

State of Louisiana
EXECUTIVE DEPARTMENT
Baton Rouge

September 10, 1980

Honorable William J. Guste, Jr.
Attorney General
State of Louisiana
7th Floor
2-3-4 Loyola Building
New Orleans, Louisiana 70112

Dear Attorney General Guste:

Thank you for your letter of August 8 concerning the possibility of state participation in a settlement of the land claims of the Chitimacha Tribe. Dennis Daugherty of my staff has discussed this matter with Fred Benton, Jr.

I would hope that any such settlement agreement would resolve all potential Chitimacha land claims, not just the 813 acres claimed in the Gilbert Smith suit. Mr. Benton tells my staff that this would be the case.

I would not want the State to prejudice the rights of any private parties to the Chitimacha suits. Mr. Benton tells my staff that the Tribe supports the proposed settlement and the landowner defendants will not be asked to contribute to the settlement. If that is the case, I see no reason for you not to express an interest in participating in a settlement.

I would appreciate your contacting Superintendent Nix to discuss the type of program to be offered in the settlement. I will, of course, wish to be informed as to the amount of any financial commitments to educational programs you would propose we make. I am not certain what "special hunting and fishing rights" the Solicitor has in mind. I would prefer not to have the State in the position of enforcing different fishing rights for Indians and non-Indians.

I appreciate your bringing the possibility of settling these title claims to my attention.

Very truly yours,

David C. Treen
Governor

DCT/lmf

cc: Honorable Edgar J. Mouton

BENTON, BENTON & BENTON
A PROFESSIONAL LAW CORPORATION
801 ST. FERDINAND STREET
BATON ROUGE, LOUISIANA 70802

FRED G. BENTON, SR.
FRED G. BENTON, JR.
THOMAS H. BENTON

ROSEMARY HAAS WILLIAMS
STEVE H. BENTON

TELEPHONE (504) 343-6611

September 22, 1980

Mr. Leo Crulitz, Solicitor
Department of the Interior
18th and "C" Streets N.W.
Washington, D. C. 20240

Dear Mr. Crulitz:

Your letter of July 22, 1980 has been discussed with Attorney General William Guste, and after careful review and consideration, the General has, by letter of September 19, 1980, authorized that I signify to you that the Department of the Interior may move ahead with its plans to talk to the Chitimacha Tribe about settlement of land claim matters in Louisiana within the parameters suggested in Governor Treen's letter to the General of September 10, 1980. I communicated this fact by telephone to Bruce Landen today, September 22, 1980.

I am enclosing a copy of General Guste's letter of September 19, 1980 and Governor Treen's letter to General Guste of September 10, 1980.

In my telephone conversation with Bruce Landen today, Mr. Landen indicated that a meeting with the Chitimachas would be conducted shortly and that the State was welcome to have a representative present. I recommended to Mr. Landen that no State representative be present at this time, as such presence now may give the Chitimachas a false impression as to the degree of interest of the State and thereby make settlement negotiations more difficult and expensive for the Department. However, I appreciate being informed of the meeting and request the opportunity to be informed in the future of events as they develop.

I hope and anticipate that you will be able to proceed with the negotiations now, and that these efforts will be successful and all parties will be pleased with the outcome. If I can be of any help in this endeavor, please feel free to call me at any time.

Sincerely yours,

Fred G. Benton, Jr.

enclosure

fgbjr/b

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THOMAS H. BENTON

ROSEMARY HAAS WILLIAMS
STEVE H. BENTON
PATRICK J. COOPER

February 27, 1981

Mr. Tim Vollman
Assistant Solicitor
Division of Indian Affairs
Office of the Solicitor
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Vollman:

I am enclosing correspondence with respect to the Chitimachas land claim settlement matter for the purpose of being sure that your files are complete, and ask if you will provide me with a progress report as to the status of this matter, which I will make available to General Guste, and he will make available to Governor Treen.

Sincerely yours,

Fred G. Benton, Jr.

enclosure

fgbjr/b

August 11, 1981

Mr. Kenneth Smith
Assistant Secretary
Indian Affairs
Department of Interior
18th and C Street, Northwest
Washington, D. C. 20240

Dear Mr. Smith:

I would like to describe to you what Louisiana is doing with respect to the settlement of all land claims matters pertaining to the Chitimacha Indian tribe.

Of paramount importance is the creation and maintenance of the Governor's Commission on Indians Affairs under the Department of Urban and Community Affairs under the leadership of Linton Ardoin, Secretary. The following is a list of activities which this Commission undertakes for the State's Indian population:

1. Provides financial assistance for Indian youths to attend Louisiana colleges. This is provided through State funds.

2. Serves as the coordinator and monitor of both State and Federal Indian programs in Louisiana.

3. Makes applications for funds to establish special programs which enhance the livlihood of Louisiana Indians; administers the funds and coordinates the activities to insure the accomplishment of common goals and objectives.

4. Advocates and promotes programs which effectively meet the needs of the various Indian tribes in the State.

5. Conducts surveys, inventories and evaluations of the various Indian programs in operation in the State.

6. Makes recommendations to improve guidelines for program development concerning Indian affairs.

7. Makes recommendations to the legislature on needed legislation concerning Indians.

8. Maintains and disseminates data on the Indian population, economic conditions and other social needs of the State's Indians.

August 11, 1981

The Executive Director of the Commission on Indian Affairs is Mrs. Helen Gindrat, telephone 927-3781.

The Department of Culture, Recreation and Tourism under Mrs. Lawrence H. Fox is planning a State Preservation Area in the Tunica Hills of West Feliciana Parish. One aspect of this Preservation Area will focus on the prehistory, history and culture of all Louisiana Indians, and also, more specifically, on the historic Tunica Indian occupation of the region. It is anticipated that the Chitimachas would, of course, be represented in the proposed commemorative center's exhibits and displays. Additionally, development of crafts, demonstrations and other folk life programs that the Preservation Area will certainly involve the Chitimachas as well as other Louisiana Indian peoples and tribes.

Yours sincerely,

Fred G. Benton, Jr.
Assistant Attorney General
Pro Bono

FGBJR/f

cc: Mr. Guy J. Dantonio
824 Baronne Street
New Orleans, Louisiana 70113

The Honorable David C. Treen
Governor
State Capitol
Post Office Box 44004
Baton Rouge, Louisiana 70804

Mr. William H. Guste
Attorney General
State Capitol
Post Office Box 44005
Baton Rouge, Louisiana 70804

Mr. William H. Guste
Attorney General
234 Loyola
New Orleans, Louisiana 70112

BEST COPY AVAILABLE

Senator COHEN. We will proceed a bit out of order. Congressman Gejdenson, why do you not come up and offer your testimony on the Connecticut case.

I might tell the group here that I have to give testimony in another committee myself, so that I may have to suspend the hearing temporarily during the course of the morning. I want to accommodate you as best I can.

Mr. GEJDENSON. Thank you very much, Senator.

Senator Dodd's office will be submitting testimony at a later date in support of this settlement.

Senator COHEN. Without objection, his testimony will be inserted in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, on July 1, 1982, I introduced, along with Senator Weicker, S. 2719, "The Mashantucket Pequot Indian Claims Settlement Act." This legislation resolves a long standing land claim dispute and establishes a federal trust on behalf of the Tribe for the purpose of land acquisition. The legislation has the effect of ratifying and effecting a settlement that has been reached by all parties in the dispute, the Pequot Indian Tribe, private landowners in Ledyard, Connecticut, and the State of Connecticut. Enactment of S. 2719 is necessary to carry out the terms of this settlement and finally resolving this dispute.

For the past 250 years, the Mashantucket Pequot Tribe has held title to their present state reservation. Prior to 1840, the Tribe controlled substantially greater acreage, but land transfers in the 1840–1855 period reduced its domain to the present size. In light of the fact that the 1840–1855 transfers to private ownership never received Congressional approval, as required by the Indian Trade and Intercourse Act of 1790, the Pequot Tribe, in 1976, began negotiations to reclaim what it considered its rightful territory.

The settlement that has been reached is reflected in S. 2719. It is an equitable settlement for all concerned and is exemplary not only of the Mashantucket Indians' patience and perserverance over the years of protracted negotiations, but a reflection of the fair play and good faith demonstrated on the part of all parties involved.

While under the terms of S. 2719, all property owners reserve the right not to sell their property if they so choose, all have agreed to the settelment and none will be displaced from their homesteads. The Pequot Indians in turn have agreed to give up all aboriginal claims to land in exchange for a federal trust established to purchase 800 acres of underdeveloped land in Ledyard.

In my view, the long history of federal responsibility to native Americans provides sufficient grounds for establishing the federally funded trust of $900,000 proposed by S. 2719. Nevertheless, since the administration has raised the question of state participation in the expenses of this agreement, I would like to point out that the state of Connecticut has, since 1935, assisted the Pequot Tribe financially through in-kind services, direct appropriations and land grants valued in excess of $200,000. A one time appropriation of $900,000 is a small price to pay for more than a century of inaction by the federal government in meeting its statutory and constitutional obligations to the Mashantucket Pequot Indians.

Mr. Chairman, I urge this committee to approve the Mashantucket Pequot Indian Claims Settlement Act and rectify the long standing inequity that has existed with respect to this Tribe. I commend you for holding this hearing and would like to express my appreciation for your sensitivity to this government's responsibility to America's native people and their rights.

Senator COHEN. I have a prepared statement from Senator Weicker and a letter from the office of William O'Neill, governor of the State of Connecticut which, without objection, I will place in the record at this point.

[The material follows:]

PREPARED STATEMENT OF LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

I am pleased to co-sponsor, along with the entire Connecticut delegation, the Mashantucket Pequot Land Claims Settlement Act. This legislation is supported by both the Mashantucket Pequots and all property owners involved in the case, and it has been approved by the State legislature as a reasonable and equitable agreement. It is a manifestation of Connecticut's commitment to protect the rights under the Constitution of all parties involved in this suit.

The history of Indian land claims has shown clearly that it is fruitless to try to separate money from land in these cases. The Pequots are not seeking money; they want a viable land base. On their present State Reservation of 200 odd acres where they have lived for over 250 years, the Pequots are creating a model of Indian development. This legislation would free them to devote time and funds to a continuation of the successful projects which they have begun. The settlement would also remove remaining clouds from titles held by present landowners.

It is clearly in the best interests of all parties, including the Federal government, to settle this dispute at as early a date as possible. Considering the backlog of cases to be reviewed by the Department of Interior, it is difficult to predict how long it could take to settle this case through that channel or how much this delay could eventually cost the Federal government or the State of Connecticut.

The cost of this legislation to the Federal government is not large, and is, in fact, smaller than the amounts involved in many other Indian land claims settlements. A Federal trust of $900,000 would be established to reimburse those landowners who choose to sell land to the Pequots; 800 acres would be transferred to the Tribe. The State of Connecticut has contributed to the settlement as well, with approximately $150,000 and 20 acres of land which contains an ancient Pequot burial ground.

This legislation represents a precedent for other Indian land cases in Connecticut, where a spirit of equitable compromise permits a settlement in a reasonable period of time at a reasonable cost to both the State and the Federal government, while the interests of both property owners and Indians are adequately protected.

We, in Connecticut, would like to see this case settled as soon as possible, and I believe that this legislation is the best way to achieve that end.

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STATE OF CONNECTICUT,
EXECUTIVE CHAMBERS,
*Hartford, July 14, 1982.*

Hon. WILLIAM COHEN,
*Chairman, Senate Indian Affairs Committee,*
*Dirksen Office Building, Washington, D.C.*

DEAR SENATOR COHEN: I am writing in support of the Mashantucket Pequot Indian Claims Settlement Act (H.R. 6612, S. 2719). This bill would establish a federal trust fund of $900,000 to reimburse Connecticut property owners who have agreed to sell their land to the Mashantucket Pequot tribe. At this time I would like to express my appreciation to Senator Dodd and Representative Gejdenson for introducing this legislation on behalf of the entire Connecticut Congressional delegation.

This year, a settlement has been reached by the state, the property owners and the Indians, after many hours of negotiation. All of the Ledyard property owners have agreed to transfer approximately 800 acres of undeveloped lands to the Mashantucket Pequot tribe. The property owners may retain the option to withdraw from the settlement. The land will be held in trust by the U.S. government for the Mashantucket Pequots, and funds will be used for economic development by the tribe.

In addition, this bill ratifies our state law, which grants 19.5 acres of state land to the tribe; acreage which historically has been designated as ancient burial grounds.

This proposed legislation represents many hours of time, negotiations and foresight. The settlement is a just and equitable solution for all parties involved.

Historically, Connecticut has continually supported the efforts of the Indian people to rebuild their reservations into self-sufficient and equally viable communities. Several agencies within the state have played an active role in aiding these tribes over the years.

In the late 1800's, the State of Connecticut assumed responsibilities to Mashantucket which were begun by the colonial government in 1667; and previously in 1638, by the English. During the years that followed, responsibility for Indian affairs was vested in various state agencies.

Finally, in 1973, the Department of Environmental Protection was given statutory responsibility for Indian Affairs. In 1978, the Governor was declared the Administrative Agent of the State for the provision of necessary services for the tribe.

Our State Department of Environmental Protection has contributed significantly to the tribe through funding and in-kind assistance. Between 1935 and 1973, previously responsible agencies' reservation appropriations totaled $38,000. From 1974 to the present, the line item budget within the Department of Environmental Protection totalled $31,745. In-kind personal services and technical project assistance totalled $28,853.31. From 1974 through 1982, payment in lieu of taxes totalled $1,342.40. The previously mentioned 19.5 acres of state land which was donated to the tribe has been appraised at a value of $50,000. The preceding assistance totals nearly $150,000 which the state has rendered to the Mashantucket Pequot tribe.

Other state agencies have also aided the tribe in recent years. The State Office of Policy and Management (OPM) provided a trailer to the Mashantucket Pequots for use as an office by their tribal council. In addition, state monies funded part-time staff workers for administrative purposes in that office. OPM has devoted much time to helping the tribe to develop a bookkeeping and accounting system, reviewed their books and introduced them to the state and federal purchasing system, which has allowed the tribe to acquire surplus property. The National Guard has also assisted the tribe in work on the roads and clearing lands on the reservation.

The State Department of Housing has advised the tribe in the establishment of a cooperative housing agreement with the state, thus making them eligible for many state services.

In summary, this legislation represents a continued commitment to the Indian people of my state and this nation. Based on this negotiated settlement, the Mashantucket Pequot tribe would be given the means to rebuild their reservations through the creation of housing and economic development. Favorable action on this legislation will mean that the commitment of all parties involved to a just and equitable solution to these claims will have been realized. I therefore urge your support of H.R. 6612 and S. 2719.

Thank you for your consideration of this important issue.

With best regards,

Sincerely,

WILLIAM A. O'NEILL,
*Governor.*

## STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT, ACCOMPANIED BY PERRY POCKROS, LEGISLATIVE ASSISTANT

Mr. GEJDENSON. Thank you for your courtesy.

Let me give you a thumbnail sketch. I am submitting written testimony, and I do not want to keep you here all day.

I think what we have here is an opportunity to make a settlement which has some equity. It has State involvement to the tune of over $200,000. There is a tribe with 187 people who have lived on the 220 acres of the reservation for the last 250 years. The landowners are agreeable. We are doing this with the least amount of disruption possible. Not one homeowner is losing his home.

The State legislature has approved it. We have put together an 800-acre tract of undeveloped land to give the Mashantucket Pequot's a reservation.

It is not the large size of other settlements, but I think it is one which adequately represents equity. One cannot come up with a per-

fect settlement, whether it is the State's responsibility, a Federal responsibility, or an individual homeowner's responsibility. One certainly cannot blame people who recently bought land in disputed areas.

This bill meets the criterion of a creditable claim. The Indians have lived on this land. They have a commitment to it. They are certainly a tribe. The settlement is reasonable. It puts together 800 acres. The property owners have agreed to it.

Again, no homeowners are losing their homes. The State of Connecticut has provided over $250,000 of assistance, and 20 acres of land of an estimated value of $50,000. I think the State is putting in a fair and equitable share.

The Indian situation in this country is certainly a national issue. One cannot decide that it was the fault of the Thirteen Colonies or the properties they held in the Western Reserve. It is a national problem and deserves to be dealt with in a national context.

I was not here when people from the administration spoke about the bill introduced by my colleagues Mr. Lee and Senator d'Amato. I think what that does is violate some basic equity.

Also, I think it removes the kind of protection of minorities which the American Constitution was established for and maintains. It is very easy for we in the majority to roll over a small group of Indians, or even a large group of Indians, and certainly a group of 187 Indians in eastern Connecticut. They are very insignificant in number, in economic power, and in every other way to the United States of America and its general population. That is why we have this form of government.

We are here to represent them and give them the same rights as any other individual in this society has. I think this legislation does it.

I will be happy to answer any of your questions about the settlement. I think it follows the great lead which you established in your State, Senator.

Senator COHEN. Thank you. Without objection, your written testimony will be made a part of the record at this point.

[The statement follows:]

PREPARED STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, and members of the Committee, thank you for the opportunity to appear here today.

I am pleased to provide the Mashantucket Pequot Indian Claim Settlement Act of 1982 for the Committee's consideration. This bill settles the first outstanding Indian land claim in the State of Connecticut. The entire Congressional delegation from Connecticut is cosponsoring this legislation as a reaffirmation of Connecticut's policy which upholds the Constitutional rights of the Pequots to negotiate this settlement with the property owners of Ledyard, Connecticut. The delegation feels that this proposed settlement is equitable, amicable, and is a precedent for our State.

The Mashantucket Pequot Tribe has held title to their present State reservation of 220 acres for over 250 years. Before that, their control extended to a much greater domain. In the course of their recorded history, successive generations have derived their living from this reservation. It is not surprising that the present leadership of the Tribe should seek to continue this policy of self-sufficiency and negotiate a land settlement that is least disruptive to all involved.

In 1976, the Mashantucket Pequot Tribe brought a suit against certain property owners in Ledyard, Connecticut. The basic claim raised by the Tribe is that past transfers of land to private homesteaders were invalid because the U.S. Congress failed to approve these transfers in accordance with the Non-Intercourse provi-

sion of the Indian Trade and Intercourse Act of 1790. The essential element of this claim remains that allegation that the failure of the United States explicitly to approve the transfers renders the prior land transfers invalid.

The settlement reached between the property owners and the Tribe is an agreement to transfer approximately 800 acres of undeveloped land to the Mashantucket Pequot Tribe. All the property owners have agreed to this arrangement, and they still reserve the right to not sell their property if they so choose. The Mashantucket Pequot Indian Claims Settlement Act establishes a Federal trust for the purpose of land acquisition by the Tribe as agreed to in the settlement. As a Federally recognized Tribe, the Pequots would then be entitled to all the rights and privileges which accompany such recognition. This bill extinguishes all aboriginal title to land and subjects the Tribe to the laws of the United States regarding Indians. This agreement, to be legal and valid, requires this implementing legislation by the Congress.

In my opinion, this legislation satisfies the four criteria by which settlements of this nature should be judged. First, is the claim credible? Yes, the Courts agree that the claim is credible. The Pequots have been a State recognized Tribe since 1667 and their claim to prior land holdings is legitimate. Second, is the settlement reasonable? Yes, not one homeowner will be displaced. The 800 acre land transfer is a compromise figure that will satisfy the future needs of the Pequots and is a reasonable acreage size to the property owners. The cost remains well below that of other claims. Third, has the State of Connecticut contributed its fair share? Yes, Connecticut, as well as Maine, is the only New England State to have consistently provided monetary aid and inkind services to its State Tribes. Since 1935, the State of Connecticut estimates that $150,000 has been spent on Tribal government administration, health and educational services and direct appropriations from the State General Assembly to the Tribe.

In addition, the State recently has granted the Pequots 20 acres of their ancient burial ground as part of the negotiated settlement. This property, considered prime real estate, is currently valued at $50,000. The State has shown its commitment to the Tribe in encouraging their economic development and in recognizing their contribution to the general community. Fourth, is there a consensus among all the parties? Yes, all the parties agree to and support the resolution of the settlement. The entire Congressional delegation, the Governor, the Attorney General, and the General Assembly support the concept and the enactment of this bill. Most importantly, the Ledyard property owners agree to this settlement and still maintain the prerogative to not sell their land holdings. The Tribe supports the approach of this legislation and looks forward to ending years of litigation.

The essential concept of this bill is that minorities must always be afforded their rights under the Constitution. Majorities will always rule the way in a democratic process, but the laws of the Constitution uphold and guarantee the rights of minorities to due process and the right to be treated as equals in any legal claims. This bill, as introduced with unanimous support by the Congressional delegation, uphold the rights of the Mashantucket Pequots to receive land entitled to them, to negotiate a settlement with property owners, and to be become a Federally recognized tribe.

This legislation is a precedent for our State. Parties involved with similar claims in the State will be persuaded that the proper course towards resolution is an out of Court negotiated settlement, not protracted litigation where all parties are potentially losers. Property owners have rights to their land too, though legal injustices befell them years before they purchased their land. Compromise is the key direction we would like to follow.

It is time to settle this matter once and for all. In the 1970's and 80's, the Mashantucket Pequots took steps to continue their self-sufficiency. They developed a tribal center, a wood harvesting industry, a maple syrup industry, attractive housing and an agri-business centering around a hydroponic greenhouse. The Tribe has become one of the principle employers of its membership. In the future, plans call for an expansion of these and other activities which will enhance, not only tribal employment, but provide jobs for others. The Pequots present a dynamic example of an Indian Tribe, self-reliant, autonomous over its internal affairs, and contributing to the general community.

Thank you for the opportunity to present these remarks. I will be happy to answer any questions you may have.

Senator COHEN. Congressman Gejdenson, the only question I have about this is that I was surprised to hear the Solicitor say that they have no real information on which to base a settlement specification and that they have had no real participation in the negotiations, that they have been almost totally removed from the process. That struck me as odd.

Mr. GEJDENSON. Our office has been involved in it from the beginning. I know that other Federal offices in Connecticut have worked with this tribe from the beginning.

Therefore, I find it difficult to believe that they have not heard of it at all.

Senator COHEN. Has there been no participation by the Interior Department? Has the Interior Department worked with you at all?

Mr. GEJDENSON. Skip, do you know about that?

Mr. HAYWARD. Almost all of the Federal agencies were involved.

Mr. GEJDENSON. All the Federal agencies except the Interior have worked with us. We have worked with the Department of Housing and Urban Development on some of the housing programs which provide housing for Indians.

That may be partially our fault. It may be partially that the Interior Department does not play a large role in the State of Connecticut.

Senator COHEN. It seems to me that before we can actually approve the payment of money by the Federal Government, presumably with the approval of the trustee—that it vested in the Department of the Interior—they should play some role in either negotiating the settlement, or seeing that it is fair, or providing some sort of participation.

Mr. GEJDENSON. That is certainly true, Senator.

I think that the reasoning probably was that the Pequots are a State tribe, not a Federal tribe.

Senator COHEN. All the Eastern tribes are State tribes. That is not the determining issue. The Penobscots and the Passamaquoddys were regarded as State tribes.

It seems to me that we ought to have the Interior Department invoved in this settlement before we go ahead.

Mr. GEJDENSON. We will certainly do some more homework immediately.

Thank you, Senator.

Senator COHEN. Thank you very much.

We will turn now to Dan Darden, the tribal chairman of the Chitimacha Tribe of Louisiana.

Are Guy d'Antonio and Harry Stansbury with you?

## STATEMENT OF GUY D'ANTONIO, LEGAL COUNSEL, D'ANTONIO, HOSE, AND STANSBURY, ACCOMPANIED BY HARRY C. STANSBURY, LEGAL COUNSEL, D'ANTONIO, HOSE, AND STANSBURY

Mr. D'ANTONIO. Mr. Chairman, I am Guy d'Antonio. With me are Harry Stansbury, legal counsel of the Chitimachas; and Dan Darden, the tribal chairman.

If it would please the committee, before Mr. Darden gives his statement, I would like to make a few comments.

We have already prepared our statement and have supplied your committee with sworn documentation which supports the entire Chitimacha claim.

I would simply like to point out to the committee, first, that the State of Louisiana has no involvement at all. The State of Louisiana has continuously supported and contributed very heavily to the Chitimacha Tribe. It was consistently active in the negotiation of the settlement with the Department of the Interior after we had supplied them with all the documentation as to the entire claim. After they had sent their appraisers out, they suggested to us the settlement amount of $7.5 million.

It was on the Interior Department's suggestion that the legislation, which is presently before this committee, was filed.

With that, I will ask Mr. Darden to address the hearing.

## STATEMENT OF DAN DARDEN, TRIBAL CHAIRMAN, CHITIMACHA TRIBE OF LOUISIANA

Mr. DARDEN. I am sure everyone has heard of the vast mineral rights and rich land of the Atchafalaya Basin. It has been our land since time immemorial.

Since the coming of the Europeans, the land was taken from the Chitimachas. With our land, our pride was also taken and our way of life which existed for 1,000 years. The Chitimacha's lands are now a mere 283 acres.

The Atchafalaya Basin is an area abundant in natural resources including oil; natural gas; numerous species and varieties of birds, fish, shrimp, deer, alligator, bear, insects, plants, and flowers. It is one of the last remaining natural wetlands in the United States.

We have had all of this taken away from us without fair and just compensation and without bloodshed. My forefathers were peaceful people living in a land blessed with bountiful wildlife and fertile soil for their crops.

Today, we have left but a very small part of our homeland. We seek only fair and just compensation for what was taken from us. We have been isolated. Our civil rights have been trampled upon. We tried to share our land, only to have it taken from us. We ask now only for what is right and just from the U.S. Government.

With the compensation we are seeking, the Chitimacha will become truly self-sufficient. We will be able to expand our existing reservation's acreage. We will be able to provide homesites for our people and improve the quality of our lives. We have already begun several economic development projects. We will be able to expand the projects and put our people to work. We will be able to better educate our children. This is our dream, to provide the Chitimacha people with those things which were so long denied them because they were Indians.

Already we have begun. We have opened up a small supermarket within the last few months. We have hired eight Indians to run the store, and they are doing quite well.

I have also opened up a small youth center.

With the money in the settlement, I intend to open up an RV parking lot across the street from the store. I personally belong to a boat club where we would have 18 to 25 boat people on weekends. We also want to open up a mobile home park next to the store. We have the land available for that.

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We want to go into some oil-related business. Whether you or anyone thinks that this is a dream or not, if we were to get this settlement, we could buy a small rig for $3 to $3.5 million. That would employ some 57 of our Indians. We have the expertise on our reservation to run and put together an entire rig.

Our past chairman is a superintendent for Texaco Oil Co. I have two or three uncles who are drillers and one other who is a superintendent.

We intend to do all of this.

I spent 30 years traveling around and in the Air Force. I see what we have given to Japan, Germany, and other foreign countries. I think we have forgotten about the Indians whom we whipped so long ago. I can speak on both sides of the fence. My mother is Irish. My father is Indian.

I respectfully request that we quit talking with a forked tongue and give the Chitimachas and the rest of the Indians in America a chance to do their thing.

Now, a lot of us are educated. I am a businessman. I own seven businesses. We have the capability on the Chitimacha Reservation to go forward and become self-sufficient.

Thank you, sir.

Senator COHEN. Thank you very much, Mr. Darden.

Mr. Stansbury, do you have any comment?

Mr. STANSBURY. No.

I will point out one thing. The chairman mentioned hunting and fishing rights. The bill as currently structured would extinguish hunting and fishing rights as well, but virtually no assessment has been placed on that. It would be extensive, that is, that alone would be.

Thank you very much.

Senator COHEN. I would like to apprise you that our staff will be in touch with both counsel to go over any particular legal difficulties we might have and about differences which might exist between it and other settlements which have been approved by the Congress.

Thank you very much.

Our next witness is Mr. Hayward, chairman of the Mashantucket Pequot Tribe. With him are Tom Tureen and Jackson T. King.

Mr. Hayward.

## STATEMENT OF RICHARD A. HAYWARD, TRIBAL CHAIRMAN, MASHANTUCKET PEQUOT TRIBE

Mr. HAYWARD. Good morning. Thank you for the opportunity, Mr. Chairman, to speak on behalf of S. 2719.

My name is Richard A. Hayward. I am chairman of the Mashantucket Pequot Tribal Council. I am here today to ask for your support for the passage of S. 2719. The bill, if enacted, would put to rest a problem which has existed for some time and outlived many generations of my people.

The Mashantucket Pequot Tribe and the Mashantucket Pequot Reservation, located in the northeastern corner of the town of Ledyard, Conn., was once a part of the powerful Pequot Nation which inhabited the area centered in southeastern Connecticut prior to the Pequot massacre in the year 1637.

The city of New London, which at one time comprised all of what is now New London County, was resettled as Pequot Town by the English in 1646, and the Thames River was called the Pequot River. In March 1658, Pequot Town was renamed New London—named after London, England—and the Pequot River was renamed the Thames River after the famous Thames River in London, England.

During the time of the early English settlements, the colonial government was busy settling and resettling the remnant of the Pequots, from Nameaug to Noank and finally Mashantucket, the site of the current reservation.

In 1655, the colony of Connecticut created the 2,000-acre Mashantucket Reservation, forcing my people to remove from their more valuable lands on Long Island Sound.

In 1761, however, the colony took almost half of our reservation without compensation and in return gave us a fee simple title to the remaining 1,000 acres.

Supposedly, we would be better off with a secure white man's title to half of our lands than with a lesser interest in a larger reservation.

Less than 100 years later, in 1855, the State of Connecticut forgot its promise and sold all but 200 acres of our reservation. In vain, we protested that the sales were contrary to Federal law and violated our rights under Constitution.

My people have never consented to the forced sales of their land, nor has the passing of years diminished our sense of injustice. Many times we have sought legal counsel, only to be told that we could not obtain legal assistance because we could not afford the attorneys' fees. Were it not for the fact that our present tribal attorneys are representing us without charge, we could not maintain the pending Federal court action.

Since colonial times, the State of Connecticut has assumed the role of guardian of my people. We did not seek this relationship which has so often been manipulated to our disadvantage. Although we have a legal and moral claim to the States' support in our fight to recover wrongfully alienated reservation lands, we have not sought public moneys to assist us in our battle.

In May of 1976, the tribe entered Federal court to regain 800 acres of reservation land which was deeded to the tribe in fee simple by the colony of Connecticut in 1761. This act is referred to in the Connecticut colonial records as the Decision of 1761.

Since that time we have worked with State officials, attorneys for the defendants, and our tribal attorneys and have reached an out-of-court settlement which will pay the current landowners for undeveloped property. The tribe in its lawsuit sued no one for their home and also agreed not to interrupt a farmer who is currently farming the land.

On June 9, 1982, the Honorable William A. O'Neill, Governor of Connecticut, signed legislation agreeing with the current settlement and deeding the 20-acre Mashantucket cemetery back to the tribe.

A copy of Substitute Senate Bill No. 507, Special Act No. 82–31, is attached to my written testimony and shall take effect only upon the enactment of legislation by the United States, providing for extinguishment of aboriginal and all other Indian tribal land claims by or on behalf of the Mashantucket Pequot Tribe and any other such claims in the town of Ledyard, which are maintained under laws of

the United States, which are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians.

It was the desire of our predecessors that we hold and maintain the land. It is the desire of the Mashantucket Pequot people to continue to exist on its land as a tribe and to be self-governing, maintain a good standard of living for its people, and become self-determining and self-sufficient through its economic development projects.

To achieve these goals, the tribe has begun several economic development projects and has several more in the planning stages.

Passage of S. 2719 will not only settle the tribe's land claims once and for all but will enable the tribe to plan for its overall land base and plan the tribe's overall economic development activity.

In closing, I would like to read the last paragraph of a letter sent by Robin Cassinamint Sachim, of the Pequot tribe, at Mashantucket, to the Governor at Hartford on May 11, 1721.

I, in behalf of myself & People, do humbly Pray this Honrble Assembly that your Honrs would be pleas'd to do us Justice (by Nulling and making void what Groaton Gentlemen have done in lotting out & fencing &c. as afore sd & yt your Honrs would be pleased to Confirm & Quiet us &c. in our Ancient possessions at Mashantuxit as aforesd. All which I in behalf of myself & people do humby Pray &c.

Thank you.

Senator COHEN. Thank you very much. It sounds as though he had a Harvard law education.

Without objection, Mr. Hayward, the attachments to your statement will be inserted in the record at this point.

[The material follows:]

Substitute Senate Bill No. 507

SPECIAL ACT NO. 82-31

AN ACT TO IMPLEMENT THE SETTLEMENT OF THE MASHANTUCKET PEQUOT INDIAN LAND CLAIMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The following terms as used in this act shall have the following meanings: "Indian" means all persons recognized by the governing body of the Mashantucket Pequot tribe as members of that tribe; and "reservation" means the Mashantucket Pequot reservation in the town of Ledyard, owned by the Mashantucket Pequot tribe or held in trust by the united States for said tribe, including those lands conveyed to the tribe by Edwin A. Card by deed in May, 1896, and those lands conveyed to or acquired by said tribe as part of the settlement of its land claims in the town of Ledyard.

Sec. 2. (a) The State of Connecticut confirms to the Mashantucket Pequot tribe in fee simple the lands comprising the reservation of said tribe, and the state releases and relinquishes to the Mashantucket Pequot tribe any claim of right, title or interest which the state may have in said reservation lands.

(b) The tribe, its reservation and the residents thereof shall be entitled to receive the same services and protection from the state as are provided to the other tribes, their reservations and the residents thereof pursuant to chapter 824 of the general statutes; provided, that subsection (b) of section 47-59b, sections 47-60 and 47-64, and subsection (d) of section 47-66 of the general statutes shall not apply to the Mashantucket Pequot tribe; and provided further that the commissioner of environmental protection shall take no action pursuant to section 47-65 with respect to the reservation of the Mashantucket Pequot tribe without the consent of the governing body of said tribe.

(c) None of the lands in the reservation of the Mashantucket Pequot tribe shall be subject to taxation by the state or any subdivision thereof.

Sec. 3. Notwithstanding the provisions of any general statutes to the contrary, the governor is authorized to convey on behalf of the State of Connecticut to the Mashantucket Pequot Tribe, the following lands:

(1) A certain piece or parcel of land, containing two acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Northerly: By land now or formerly of Mary Gonch; Easterly: By land now or formerly of Mary Gonch; Southerly: By land now or formerly of Mary Gonch; Westerly: By land now or formerly of Mary Gonch.

Being part of the land purchased by Mary Gonch from the Federal Land Bank, February 17,

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1940, as recorded in the Land Records of the Town of Ledyard, Volume 16, Page 380, which premises are shown on a map entitled, "CONNECTICUT STATE PARK AND FOREST COMMISSION - PEQUOT BURIAL GROUND; Scale 1"=100' and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which the map the premises herein conveyed are shown as Parcel #1.

(2) A certain piece or parcel of land, containing 17.5 acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Northerly: By Fanning Road and land now or formerly of Mary Gonch; Easterly: By land now or formerly of Mary Gonch; Southerly: By land now or formerly of E.L. Scholfield; Westerly: By Fanning Road and land now or formerly of Mary Gonch.

And being part of the land purchased by said Mary Gonch from the Federal Land Bank, February 17, 1940, as recorded in the Land Records of said Town of Ledyard, Volume 16, Page 380, which premises are shown on a map entitled, "CONNECTICUT STATE PARK AND FOREST COMMISSION - PEQUOT BURIAL GROUND; Scale 1"=100' and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which map the premises herein conveyed are shown as Parcel #2.

Sec. 4. Any transfer of land or other natural resources located within the town of Ledyard from, by or on behalf of any Indian nation, or tribe or band of Indians which occurred prior to the effective date of this act, shall be deemed to have been made in accordance with chapter 824 of the general statutes.

Sec. 5. This act shall take effect upon the enactment of legislation by the United States providing for extinguishment of aboriginal and all other Indian tribal land claims by or on behalf of the Mashantucket Pequot tribe and any other such claims in the town of Ledyard which are maintained under laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians.

*Certified as correct by*

Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved 2:35 p.m. June 9, 1982

Governor.

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**To ye Honrble ye Governour & Company Sitting at Hartford May ye 11th 1721**

The Memorial of Robin Cassinnamint Sachim of ye the Pequet Indians Living at Mashuntuxitt (in Groaton) in behalf of Myself & My People, humbly sheweth to your honours

1st in ye first place being Movid off from our Right at Nawayunk, & where wee & our Fathers Livid & improvid Many Years ( thought it was our own & had a good right to ye Same) Nevertheless ye Town of Groaton took it from us & lotted it out which was greatly to our dissatisfaction, As Your Honrs may Remember by our Complaint to this Assembly.

2dly In ye Second place (upon our Complaint to this Assembly Your Honrs took Care of us & ordered some Gentlemen to Lay out Mashuntuxit where our Predicessors Anciently dwelt And Improved by Planting both Corn & Orchards: & our Orchards are of a great worth & Value to us by Reason of our Grandfathers & fathers Planted them & the Apples are a great Relief to us.

3 dly ye sd Gentlemen Measured ye Land to us at Mashuntuxit which was greatly to our Satisfaction.

4thly Groaton Gentlemen (Especially old Justice Smith which we much depended Upon) told us yt they would never move us from ye afore sd Mashuntuxit: nor lott it out as they had Nawayunk.

5ly ye Town of Groaton has been & lotted out ye best of our Lands at the aforesd Mashuntuxit, including our Orchards, by fencing in of our sd Lands (& Building likewise) which is to our great Wrong & Dissatisffaction.

6ly the English in ye time of ye War Called us brethern & Esteemed us to be Rational Creatures but behold now they make us as Goats by moving us from place to place to Clear Rough Land & make it profitable for 'em.

7ly I in behalf of myself & People do humbly Pray this Honrble Assembly that your Honrs would be pleas'd to do us Justice (by Nulling & making void what Groaton Gentlemen have done in lotting out & fencing &c. as afore sd & yt your Honrs would be pleased to Confirm & Quiet us &c. in our Ancient possessions at Mashantuxit as aforesd. All which I in behalf of myself & people do humbly Pray &c.

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Robin Cassinnamint
marke

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Senator COHEN. We will hear next from Mr. Tureen.

## STATEMENT OF THOMAS TUREEN, LEGAL COUNSEL, MASHANTUCKET PEQUOT TRIBE

Mr. TUREEN. Senator, I am here primarily to answer questions.

I know that one question which will be asked will be in terms of the involvement of the administration. Let me say that the administration does know about this claim. Rather, the Interior Department is aware of this claim.

We discussed the Connecticut claims, not with the current administration but with the Carter administration when we were discussing the settlement of the *Maine* case. In fact, we discussed it at some length with them.

I do not know what is in their files.

Senator COHEN. Do you have any correspondence in your files which you had with the prior administration?

Mr. TUREEN. I would have to check, Senator. I know that there were extensive conversations.

Susanne Harjo, who is here today, participated in some of the conversations.

At that time, and since then, we discussed what we thought would be the monetary sizes of the settlements in Connecticut. In fact, what we have come up with is less money than what we were talking about back then.

Senator COHEN. How did you arrive at the figure of $900,000?

Mr. TUREEN. The $900,000 figure is the result of an appraisal which we had done by the State of Connecticut. Extensive appraisals were done on all of the parcels in question by a party who could not be more distinterested in the outcome of the appraisal. I feel that they are entirely fair appraisals, and the numbers and the settlement are predicated directly on them.

We estimate that acquisition of the land in question will cost approximately $900,000. We have an approximately $200,000 leeway to take into account acquisition costs. Hopefully, there will be some leftover funds for economic development purposes.

I wish that the committee could see what Skip Hayward has done in Mashantucket. It is truly a marvel. He has a hydroponic greenhouse which is a marvel and a beauty to behold and a model housing development there. All of the Federal agencies which have been involved have considered them to be a model and, I think, are quite impressed with what they have done.

We discussed the settlement with the current administration at about the time when we submitted the legislation. We contacted the administration. Basically, what we were told was that they would oppose the bill.

I am very pleased to see the apparent interest which Interior has in looking into the merits of the claim. As soon as this hearing is over, I shall contact them, and I will be discussing it with them. I will provide all of the information to them.

Certainly, it should not be difficult for them to determine that the claim is as credible as the Narraganset claim which was settled 3 or 4 years ago and is on a par with the Maine claim.

The Federal acknowledgment people have been in Connecticut. They are familiar with both tribes. It is my understanding that they believe that they could easily establish recognition status through that process.

I feel that it would be a terrible waste of the Federal Government's resources and the tribe's very limited resources to have to go through that process. I think it is far more efficient all around, inasmuch as we all know that they will be recognized, to simply do it in the legislation.

As Solicitor Coldiron testified, there are something like 73 petitions awaiting decisions. It will be the year 2000 before they are through with that. There is no reason to have that expense.

One other matter I would like to mention is in terms of the question of the involvement of the administration. As the Senator knows, I have been involved in several of the New England claims, and I have learned some lessons through those experiences. The primary lesson I learned, both from my experience in Maine and from watching the experience of the Cayuga Indians, is that the most important thing in the settlements is consensus at the State level.

We worked for several years putting together a negotiated settlement with the administration in Maine, only to find that we had, basically, to start all over and achieve the agreement with the State of Maine.

In New York, they worked out a settlement. It did not have the support of the local congressman, and it failed on the floor of the House of the New York State Legislature.

Truly, what we have found through this process is that consensus at the State level is the most essential ingredient. That was our primary focus. It has been our primary focus in the last year. We have total consensus at the State level. We have legislation passed by the State. The dollar figure, with which we have been working, was one well within the limits which were ever discussed with the administration.

It is true that our emphasis has been at the State level, but it is also true that the administration has shown decidedly little interest in resolving this claim, or other claims, for that matter. If they are truly interested in working with us, we would be happy to spend whatever time they would like to spend. We can start that process this afternoon.

Senator COHEN. Thank you very much, Mr. Tureen. That will be very important, namely, that as soon as this hearing is over, that you make contact with the Interior Department and go down and talk with them.

Mr. TUREEN. Senator, we will go right back to the sources to whom we were speaking 2 weeks ago, when they told us that the administration would oppose this legislation. We should save our money and not bother coming down.

Senator COHEN. Has the State of Connecticut recognized the tribe?

Mr. TUREEN. The State of Connecticut has always recognized the tribe and recognizes the tribe today. That is one of the reasons why the recognition people at Interior felt that recognition would essentially be a fait accompli.

Senator COHEN. Mr. King?

## STATEMENT OF JACKSON T. KING, JR., ESQ., BROWN, JACOBSON, JEWETT AND LAUDONE, ATTORNEY FOR INDIVIDUAL DEFENDANT PROPERTY OWNERS

Mr. KING. I will be brief. I have submitted written testimony which I ask be accepted into the record.

I am not here to assist in righting some general injustices or wrongs which have been visited upon the Indians over the centuries. I am here to address a very specific legal problem which has been caused to our clients; that is, the landowners, by what is a breakdown of our governmental system relating to land titles.

We talked about the horrors which have happened to the Indians, but what about the horrors which have happened to the defendants in this case? They, like many other people in this country, have saved for their lifetimes to buy their homes and their lands. Now, they find that they are confronted with extensive litigation wherein a possible outcome is a total loss of their homes and everything for which they have worked over the years.

It is through absolutely no fault of their own. It is because of a problem with a land transfer back in 1855.

We have had the misfortune of having to advise our clients—and I say this without waiver of any claims which we may make in future litigation, of course. This is a very solid claim. It is a very solid, neat, specific claim from a legal point of view as far as the Indians are concerned. The transfers were clearly made. The tribe has been recognized by legislation for many years in Connecticut, and we have very little left to litigate on a legal basis. The only basis is factual.

To the extent that motions have been made in this case over the last 6 years—it started in 1976—it has followed the pattern of many of the Eastern land claims. Our motions have generally been unsuccessful. The courts have been ruling against us time and time again.

The settlement would pay to our clients the fair market value of the properties. As can be seen by the numbers you have heard, the fair market value of these properties is not a great deal of money. It often comes to less than $1,000 an acre, even in the State of Connecticut which is a fairly populated State with fairly high land values.

Our landowners are very anxious to have this resolved.

There is one additional factor. There are other landowners who seem to have their properties clouded by the existence of the Indian claim, even though they are not within the original reservation' property. We feel that a resolution of this matter will take a bit of the cloud off those properties as well.

We ask that this act be passed and that the matter be resolved as soon as possible.

Senator COHEN. Thank you. Without objection, your written statement will be inserted in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF JACKSON T. KING., JR., ATTORNEY FOR INDIVIDUAL DEFENDANT PROPERTY OWNERS

Mr. Chairman, I thank you for the opportunity to address you and this Committee regarding S. 2719, entitled the "Mashantucket Pequot Indian Claims Settlement Act." Our law firm, Brown, Jacobson, Jewett and Laudone, P.C., of Norwich, Connecticut, has been representing a majority of the affected land-

owner defendants since the onset of the suit brought by the Pequot Tribe to recover certain lands, which suit has been pending in Federal District Court in Connecticut since 1976. We are in agreement with Mr. Thomas Tureen, counsel for the tribe, and Mr. Richard Hayward, the tribal spokesman, that this legislation presents the fairest and most practical method of settling what might otherwise appear to be an unsoluble conflict. As indicated, the litigation is still pending and while we are in agreement with the tribe that this legislation should be passed and will solve the problems between the parties, I must state for the record that the legal issues in the litigation are far from settled and any statements made are made here for the purposes of settlement and in the event this legislation is not enacted, no admission as to factual or legal matters shall be considered admissible in any further legal proceedings either on the trial court or appellate level.

The general practice of law in a relatively small town can and does present a wide variety of challenges and surprises. I know that I shall never forget that evening in 1976 when an obviously distraught friend and neighbor, Mrs. Lois Tefft of Ledyard, Connecticut, called me indicating a desire to meet immediately as she had been served with a summons indicating that the Pequot Indians were attempting to recover lands formerly belonging to the tribe, including Mr. and Mrs. Tefft's farm. I had always been aware of the existence of Indians living on the old Mashantucket reservation in the vicinity of the Tefft farm. The very name, Indiantown Road, suggested their historical presence and I had heard stories of the late Mrs. Plouff, who used to conduct annual expeditions onto neighboring properties, perhaps just to pick an apple or two, but suggesting to them that she considered those lands on which her neighbors resided as still belonging to the Pequot Tribe. However, these instances were never taken seriously, and particularly not from a legal point of view, so that I felt quite comfortable in my mind that I could assure Mrs. Tefft that her land was safe from any such claims as these.

We reviewed the documents together at my home, and I spent the rest of the evening discussing the issues as revealed by the complaint filed in the Federal District Court with she and her husband. Certainly, I had had no experience with Indian law and I was quite confident that no other lawyer in the State of Connecticut had faced such issues before. According to the writ, the land in question had been conveyed from the tribe in the 1850's and while it had been owned by various landowners continuously since then and to the present time, it was claimed that those initial conveyances were defective for lack of Congressional consent as required by the Nonintercourse Act of 1790. My feeling was that this must be a technical claim at best and even it had some validity one hundred years ago, the passage of time would surely prevent such a claim from being asserted at this late date.

Gradually, over the next few weeks, more of the defendants consulted with us, and we have been deeply involved with this litigation since that date. We very quickly learned that proper representation in this matter would require not only extensive legal research, but extensive historical research into the early history of Indian tribes and particularly, the Pequot tribe in Connecticut. We formed teams of volunteer researchers from the groups of defendants and others, enmassed great quantities of materials from the state archives and other places relating to early Indian history. We learned that the Pequots, as a tribe, had been massacred in the 17th century and ordered to disband forever. The few remnants of the tribe were, however, given a reservation in Noank on the Southeastern Connecticut coast, about ten miles south of Ledyard. But, before the 17th century had closed, the value of that Noank property was recognized, and the tribe was relocated up to its present reservation at Mashantucket, in what is now the Town of Ledyard. The original reservation was perhaps 2,000 acres, gradually reduced to 1,000 and then, as a result of the sales in questions, finally to approximately 200 acres. Thus, it became clear from our research that there was a Pequot tribe and it occupied the reservation, that is the land in question, as of the time of the passage of the Nonintercourse Act in 1790.

We also learned that several similar suits had been brought in New England and by then, the suit in Maine was drawing national attention sometimes on what seemed to be a daily basis. We soon formed a network of defense attorneys throughout New England who exchanged memoranda, studies and research so that we might be of assistance to one another in what was certainly a new issue for any of the attorneys involved in this matter on the side of the landowners.

It soon became apparent not only to ourselves, but to all of the defense attorneys in the suit, that the claims being made by the tribes were not frivolous but

were based upon a solid legal and factual footing. For example, the Nonintercourse Act clearly provided that no reservation lands could be conveyed from Indians after the passage of that Act without Congressional action. While many fine legal arguments were made, including that the Act was never intended to apply to the Eastern tribes, that Congressional consent might be found by implication or that perhaps the state government on approving those sales was acting as the agent of the federal government, none of these arguments have had any substantial success when argued in court. The Indian claims seemed sound from a legal point of view.

We also found that the very obvious arguments which we felt would bar the Indians from bringing these suits on the basis of passage of time would be of no avail. Our research showed that courts have consistently rejected such arguments throughout the country and also in the other cases brought throughout New England. Thus, it was perhaps predictable when Judge Blumenfeld, in our case, rejected our arguments based upon statute of limitations, laches, and the like. Essentially, the reasoning was that since Congress will not permit the alienation of Indian lands without its consent, the courts would not permit the alienation of those lands indirectly by the passage of time resulting from the tribes' failure to take earlier legal action.

Thus, what seemed to many lawyers, including myself, to be impossible, happened. People who had purchased property, paid for it, improved it and had what appeared to them or to any lawyer to be valid deeds based upon an unbroken chain of title, were being told that they could likely lose that property, and they would have no remedy whatsoever. It might be noted as an aside that we explored the question of whether they would have a cause of action against their attorneys who certified title at the time they purchased their properties. That responsibility would be based upon a negligence standard and no attorney would, under the state of the knowledge existing at the time these titles were searched, be successfully charged with negligence for failing to be aware of Indian claims that had not been asserted for more than a century.

We also looked at that time to relief from our state government, but perhaps because they, at first glance, were as skeptical as we were as to the validity of these claims, we received very little cooperation in the early stages. Of course, as will be seen, the state has since made many contributions and pledged its full cooperation to the attempted resolution of these matters.

If the matter is not resolved now it is far from being tried. There is still much research to be done, particularly in the historical area, and if there is a trial in this matter, the parties would be looking toward many months of trial, perhaps not unlike the trial which has taken place in the Mashpee case in the Federal District Court in Massachusetts. Because of the awesome cost of litigation, both from the point of view of the litigations and the court system, and in light of the practicalities of the matter, it is thought that the solution to be presened by this legislation is the best for all concerned.

Most of the defendants have agreed that if the Act is passed they will sell their property at fair market value as it may be determined by independent appraisers. That land would then become part of the reservation and perpetually used by the Pequot Indian tribe for tribal purposes. A few landowners insist on retaining their property, and this has been fully discussed with the tribe and a settlement can be achieved wherein these landowners will be able to retain their property and their title will be cleared by the passage of this legislation. No landowner will lose his or her residence. Thus, we feel that this proposed settlement is a very fair one for all concerned. The landowners parting with title to their property will be compensated under a standard, not unlike the one that would apply in a government condemnation taking title by eminent domain. The landowners will have to bear their own costs and legal expenses to date, but they will be spared considerable additional expense which would result from a prolonged trial of this matter, particularly onerous if they were to lose. If tried, appeals would probably be inevitable and the titles to the property affected and, to some extent, nearby properties not directly affected, would be in limbo for many years to come. Thus, this legislation will have a settling effect on titles to the property in question as well as properties in the vicinity of the Indian claims area but which are not directly affected by this legislation.

Of course, when we first reviewed this matter, it occurred to us that if Indians could make claims like this involving our clients' property, they could make similar such claims as to all properties in the State of Connecticut and elsewhere, as wouldn't it be true that the Indians, in a sense, were once the

owner of all the lands in the New World. However, our research has shown that this is clearly not the case. This is a very unique claim, which can be made only as to those properties which were Indian lands as of 1790 and which were then conveyed away from or by the Indians subsequent to that date without Congressional approval. By 1790, most of the Indian tribes in New England were severely limited, and the Indian tribes, for example, in Connecticut, were limited to just a few reservations. It is thought by the undersigned that there are only two claims in the State of Connecticut which fit within the category of this one; the other being the claim involving the Schaghticoke Tribe in Kent, and as we understand it, legislation has or will be presented to settle that case as well. Thus, the passage of this legislation will not open the gates requests for additional legislation which would present a burden on our government resources and our taxpayers.

Finally, we would like to state a word as to the state contribution to the settlement. As indicated above, at first, state officials were wary, conservative and almost hostile to the claims being made in this matter. However, as they realized that these were valid claims and had a devastating impact on the landowners involved, the state did rally its forces to assist in the settlement. Our research in this matter has shown that the state has had a long and continuous involvement with the Pequot Indian Reservation and the personnel and resources associated therewith have turned their attention to the solution of this problem. However, even more substantively, we have received assistance in the form of appraising and surveying from the Land Acquisition Units of the State Department of Environmental Protection, and they have spent much time and money in helping us come to a solution of this problem. They have additional work to do and we are confident they will complete it. The state has enacted legislation authorizing the transfer of certain property in the vicinity of the reservation to or for the benefit of the tribe as an additional contribution toward the resolution of this matter. We know that the state will continue to play an active role in the reservation as it is enlarged.

In conclusion, we finally are able to look with some hope toward conclusion of this long ordeal which has shaken the faith of many of our clients in our legal system which had always, at the very best, provided a guaranty of the protection of private property.

We are grateful for your consideration of our problem and we would ask this bill be passed.

Senator COHEN. Mr. Tureen, as I recall the Maine settlement, we did provide for the recognition of the Malaseet. Is that correct?

Mr. TUREEN. That is correct, Senator. We provided for it without going through the Federal acknowledgement process.

I think it is simply a matter of economy. If the administration wants to talk about saving money, this is certainly an expensive proposition for all parties. If it is going to happen anyway, we might as well do it here.

If I may, I would like to address a couple of points which I did not address before. First of all, the historical record reveals that, when the State of Connecticut sold this land in violation of the Nonintercourse Act, it received $8,091.17. The money was credited to the Indians' account. There was no fraud on the part of Connecticut in the sense of taking the money.

Of course, the Indians paid the expenses of the transaction. A point which I think eluded everyone earlier, when they were discussing the question of what the Nonintercourse Act is about, is that what Congress recognized when it enacted the Nonintercourse Act was that for Indians, anyway—we are arguing, as the Senator recognized, that this is a special area of the law.

For Indians, money is not the same thing as land. It is not satisfactory, even if $8,000 was a fair price for the land at that time. I do not know whether or not it was. Even if it were a fair price, Congress recognized in 1790 and has recognized consistently since then that you

cannot substitute money for land when you are talking about Indians. Their livelihood and their ways of life are inextricably tied up with the survival of a viable land base.

That is what the Pequots have consistently tried to hold onto. The statement which the chairman read earlier said the same thing that they are saying today, namely, that they do not want money. They are not looking for money. What they are looking for is a larger land base.

The Nonintercourse Act was designed to preserve the land base for them. This settlement is designed to restore the land base to them with a minimum of disruption of the Pequots or other people. We are not looking to hurt anyone by this settlement and can accomplish their ends without doing that.

Senator COHEN. Thank you very much. I appreciate your testimony.

Without objection, the statement of Senators Russell B. Long and J. Bennett Johnston will be inserted in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF SENATOR RUSSELL B. LONG AND SENATOR J. BENNETT JOHNSTON

Mr. Chairman, on March 29, 1982, we introduced legislation to provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana. Our legislation, S. 2294, is identical to that (H.R. 5358) introduced earlier this year by our distinguished colleague in the House, Congressman Billy Tauzin, who was instrumental in forging the settlement contained in these measures. This legislation enjoys the full support of the entire Louisiana delegation, the State of Louisiana, the Chitimacha Tribal Council and the pertinent landowners associations—widespread support which will be demonstrated in testimony the committee will receive today. We respectfully request that a copy of the attached letter to Chairman Cohen, signed by all the members of the delegation in support of S. 2294, be made a part of the record at this point.

Section 5 of S. 2294 authorizes the appropriation of $7.5 million for the establishment in the United States Treasury of the Chitimacha Claims Settlement Fund. Of this amount, not to exceed $4 million will be used by the Secretary of the Interior to purchase land for the Tribe, which will be added to the existing 250 acre reservation. The remainder of the Fund will be held in trust by the Secretary for the benefit of the Tribe, with income derived from the Fund to be paid semiannually to the Tribe. It is our intent that these funds will be used for the economic development of the Tribe, as determined by the Tribal governing body.

The $7.5 million payment is compensation for the land claims of the Chitimachas extinguished by section 4, which is designed to take effect upon the appropriation of these funds. Since 1977, seven suits have been initiated by the Chitimacha Tribe in the eastern, middle and western Federal district courts to recover recognized and aboriginal title to over one million acres of land in six parishes in southern Louisiana. Considerable hardship for existing landowners could result absent a settlement of these claims. Moreover, further delays will only cause additional hardship for the Chitimachas who have made a good faith effort to settle these long-standing claims.

Unlike most of the other states involved in eastern land claims, the State of Louisiana did not have a direct role in the loss of the Chitimacha lands. For example, 813 of the approximately 3500 acres on which this settlement is based were patented to the Chitimachas by President Pierce. These lands were subsequently lost through individual sales, sheriffs' sales and state partition orders, but in no instance were the transactions approved by the United States as required by the Indian Nonintercourse Act, 25 U.S.C. section 177. In fact, in a letter dated July 22, 1980 to Mr. Fred Benton, former Interior Solicitor Krulitz touched in part on this very principle and we request that a copy of this letter be made part of the hearing record on S. 2294. It therefore seems inappropriate to us to require the State of Louisiana to share the financial burden of a settlement. We are also constrained to point out that the State already provides services to the Chitimachas and other tribes with state funds, including financial assistance for Indian students to attend Louisiana state colleges, under the direction of the Governor's Commission on Indian Affairs. Altogether, the

State of Louisiana contributes a substantial amount in state funds each year for the support and furtherance of this Tribe.

The $7.5 million authorization in S. 2294 is half the original settlement sought by the Chitimachas in the negotiations and only a small fraction of the total amount of the value of the recognized and aboriginal lands claimed, a clear demonstration of the Tribe's willingness to compromise to settle this issue. We further understand that the Department of the Interior appraised three tracts within the claimed area in question at $8 to $10 million, an amount higher than the compensation proposed in S. 2294.

In sum, we believe the settlement outlined in this legislation fair to all parties; will avoid further hardship to state and local governments as well as affected landowners which could result from further litigation; and most important will fulfill our fiduciary and moral responsibilities to the Chitimacha Tribe. In testimony before this Committee on S. 2084 delivered on June 23, 1982, Interior Solicitor Coldiron stated with respect to eastern land claims that "A legislative solution is far preferable to burdensome, protracted, and perhaps ultimately inconclusive litigation. During the litigation the land title of the affected landowners would be clouded, their ability to obtain title insurance or sell their property would be harmed and sale of municipal bonds would be hampered; the affected communities would be severely disrupted." Solicitor Coldiron makes a convincing case on the harm litigation would cause to all parties. We believe the legislative solution contained in S. 2294 provides a fair and reasonable way to prevent such harm to the parties affected by the Chitimacha claims in south Louisiana.

We have urged the Department to support this settlement and we submit for the record copies of pertinent correspondence outlining our reasons for their so doing. We believe these claims are unique in several important respects, including a loss by individuals and the lack of a direct role by the State. We wholeheartedly agree with Solicitor Coldiron's statement in the testimony cited above that "Indeed, the Eastern land claims themselves are different from one another and should be individually evaluated." The settlement proposed in S. 2294 is designed to meet the particular circumstances of the Chitimacha claims and will not prejudge other eastern claims. Instead, it will simply put to rest uncertainty which would result from further litigation in a fair and reasonable manner.

We sincerely appreciate the Committee's interest in this issue which is critically important to the 600 Chitimachas, to potentially one-third of the landowners in south Louisiana, to various local governments in six parishes in south Louisiana and to the State of Louisiana. We look forward to working closely with you and your staff on S. 2294 and hope that favorable action on it will be possible this year.

J. BENNETT JOHNSTON
LOUISIANA

United States Senate
WASHINGTON, D.C. 20510

July 13, 1982

The Honorable William S. Cohen
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C.

Dear Mr. Chairman:

By this letter, we want to advise you of our full support for S. 2294 and H.R. 5358, identical legislation introduced in the House and in the Senate to provide for a fair settlement of the Chitimacha land claims.

As you know, the Chitimachas are a Federally recognized tribe in southern Louisiana and currently reside on a 250 acre reservation in Charenton, Louisiana. Since time immemorial, the Chitimachas have owned and resided on land in parts of six parishes and the Tribe has initiated seven suits to recover recognized and aboriginal title to over one million acres of land in this area. The settlement outlined in these measures which will be the subject of a hearing on July 14 before your committee will extinguish all these claims upon appropriation of the $7.5 million Trust Fund authorized therein.

State, private and tribal parties all support this settlement. We believe favorable action on it will avoid further hardship for all parties which could result from further litigation and urge that the settlement outlined in S. 2294 and H.R. 5358 be approved.

Sincerely yours,

Russell B. Long
United States Senator

J. Bennett Johnston
United States Senator

John Breaux
Member of Congress

Gillis W. Long
Member of Congress

Lindy (Mrs. Hale) Boggs
Member of Congress

W. Henson Moore
Member of Congress

Jerry Huckaby
Member of Congress

Robert L. Livingston
Member of Congress

Billy Tauzin
Member of Congress

Buddy Roemer
Member of Congress

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J. BENNETT JOHNSTON
LOUISIANA

United States Senate

WASHINGTON, D.C. 20510

July 1, 1982

The Honorable Kenneth L. Smith
Assistant Secretary for Indian Affairs
Department of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

On Wednesday, July 14, legislation we introduced in March, S. 2294, will be the subject of hearings before the Senate Select Committee on Indian Affairs.

This bill, which is identical to legislation introduced by Representative Billy Tauzin in the House (H.R. 5358), outlines a fair settlement of longstanding claims by the Chitimacha Tribe to over one million acres of land in southern Louisiana. In return for extinguishing these claims, the Chitimacha Tribe will receive as compensation a $7.5 million Trust Fund. Of this amount, not to exceed $4 million is to be used to acquire land to be added to the existing 250 acre reservation in Charenton, Louisiana and the remainder is to be used for tribal economic development.

We are enclosing a copy of S. 2294 for your perusal. We urge you to give this legislation your careful, personal consideration and hope that the Department will be able to endorse the concept outlined therein to avoid further hardship for the state and local governments, the Tribal members and the affected landowners which would result from further litigation.

Sincerely yours,

Russell B. Long
United States Senator

J. Bennett Johnston
United States Senator

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| ADDRESSEE'S NAME | DATE |
|---|---|
| The Honorable James G. Watt | July 1, 1982 |
| ADDRESSEE'S FIRM (IF APPLICABLE) | |
| Secretary of the Interior | |
| STREET ADDRESS | |
| Interior Building | |
| CITY, STATE AND ZIP CODE | |
| Washington, D.C. 20240 | |

MESSAGE:

Dear Jim:

Hearings will be held on Wednesday, July 14 before the Senate Select Committee on Indian Affairs on S. 2294, legislation Russell and I introduced last March to settle the Chitimacha land claims which are now affecting the eventual use of over 1 million acres in 6 south Louisiana Parishes.

The settlement proposed is fair, reasonable and will avoid further hardship for the landowners and the Tribe. Full Federal payments (totaling altogether $7.5 million) are justified since Louisiana, as the Department has acknowledged, did not play a major role in loss of these lands to the Chitimachas. Moreover, the amount authorized is less than half the initial amount sought in settlement negotiations and is less than the Department initially valued the 2000 acres at issue.

The Louisiana delegation solidly supports the settlement, the State of Louisiana supports it, the Chitimachas support it and the landowners support it. I'm sure you will agree this is an unusually agreeable situation. I hope the Department will seize upon this opportunity to settle this issue fairly and reasonably, and avoid further hardship for all parties which would result from further lengthy, costly litigation.

Department support for this legislation is critical. I urge you to review it carefully and stand ready to discuss any parts with you personally should you so require.

Sincerely,
J. Bennett Johnston
U.S. Senator

| SENDER'S NAME (PLEASE PRINT) | SENDER'S SIGNATURE |
|---|---|
| J. Bennett Johnston | |
| SENDER'S ADDRESS & ZIP CODE | TELEPHONE NO./AREA CODE |
| Russell Senate Office Bldg, Washington, D.C. 20510 | 202-224-5824 |

THIS MAILGRAM IS SUBJECT TO THE WESTERN UNION TELEGRAPH COMPANY'S CONDITIONS, RULES, AND REGULATIONS, WHICH ARE ON FILE WITH REGULATORY AUTHORITIES.

W. U. 5201 (RS/78)

Senator COHEN. The hearing stands adjourned.
[Whereupon, at 10:35 a.m., the hearing was adjourned.]

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# APPENDIX

## ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

BENTON, BENTON & BENTON
A PROFESSIONAL LAW CORPORATION
601 ST. FERDINAND STREET
BATON ROUGE, LOUISIANA 70802
TELEPHONE (504) 343-6811

FRED G. BENTON, JR.
THOMAS H. BENTON
STEVE H. BENTON
PATRICK J. COOPER
MARSHA J. JOHNSON
KATHERINE WHEELER

FRED G. BENTON, SR.
(1897-1981)

JUL 22 1982
SOLICITOR'S
DOCKET

July 19, 1982

Hon. William H. Coldiron
Solicitor
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Solicitor:

On Wednesday, July 14, 1982, you testified before the Senate Select Committee on Indian Affairs with respect to the Chitimacha Land Claim Settlement Act for Louisiana, S. 2294, a copy of your statement is enclosed.

On page 4, you declare:

> "We also believe the State should be required to bear half of the liability resulting from extinguishment of the claims, primarily because the State and its citizens would be the beneficiaries of any settlement and, over the years, have benefitted from the private, non-tribal ownership of these lands." (Emphasis)

I respectfully object to, and protest, the 50% contribution requirement, on the grounds that it is completely contrary to the Solicitor's previous representations to Louisiana, on which Louisiana has heavily relied. Specifically, reference is made to the Solicitor's letter to Louisiana Attorney General Guste of July 5, 1979 and the Solicitor's letter to me of July 22, 1980 (copies enclosed). Please refer to page 3 of the Solicitor's letter of July 22, 1980, in which the Solicitor declares:

> "Negotiated settlements of other eastern Indian land claims have generally included contributions from states or major landowners. As we noted above, the State of Louisiana played a relatively minor role in the events which gave rise to the Chitimacha claims, and we do not expect a large contribution in land or money from the Stae. Nonetheless, we believe that a contribution on the part of the State would

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> facilitate passage of the settlement legislation by demonstrating a State commitment to such a solution. Further the State appears to own some roads and to have some lands acquired pursuant to the Swamp Land Act within the claim areas. The Tribe's attorneys have suggested the possibility of a State contribution in the form of special hunting and fishing rights or a special educational program fo the Tribe. We would be interested in getting the State's reaction to such a contribution or alternative contributions." (Emphasis)

and to page 2 of the same letter, wherein the the Solicitor declares:

> "Since the State of Louisiana (in contrast to the states involved in most of the eastern land claims) did not play a direct role in the loss of most of the Chitimacha lands, we have not expected a contribution from the State on a scale comparable to the contributions of other states in the settlement of eastern Indian land claims." (Emphasis)

The foregoing statements by the Solicitor, together with the BIA's promise of help and assistance, have constituted a basic foundation on which Louisiana's actions have been predicated with respect to land claim matters of both the Chitimacha and Tunica-Biloxi Tribes.

No mention was made at any earlier time of a contribution of 50% by Louisiana. This is an entirely new idea, which is in conflict and inconsistent with all earlier communications, both letters and telephone conversations. Prior to the hearing in Washington, on July 14, 1982, there was no indication whatsoever that the Solicitor's Office was to offer such an extraordinary idea, and, accordingly, I had no opportunity to consult with Attorney General Guste. My written statement (copy enclosed) does not address this subject.

The 50% contribution requirement that you now propose is admittedly not predicated on "fault" of the State of Louisiana during historic times, but on the theory that the State and its citizens are special "beneficiaries". It is respectfully urged that no such beneficiaries exist. The numerous private citizens who are facing the threat of litigation in Louisiana are enjoying a fundamental right under the U.S. Constitution, namely, ownership of private property. The exercise of this right in Louisiana should not

be made subject to the payment of a special extra levy or charge as you now propose. If any ancient Indian Land claims exist, such claims would be exclusively a Federal responsibility.

Louisiana is unprepared and has no justification to assume one-half of the cost of any settlement. Louisiana has strongly and properly relied on the Solicitor's prior communications, which have indicated that the State of Louisiana was not to be asked for any substantial contributions. The Solicitor's Office has repeatedly represented that the United States would assume almost all of the responsibility for land claim settlements. I request that the Solicitor's Office withdraw the 50% contribution requirement.

In view of President Reagan's veto message on H.R. 5118, Southern Arizona Water Rights Settlement Act of 1982, it is vital that the Bureau of Indian Affairs and the Solicitor's Office continue to participate in the negotated settlement and make a final recommendation on the Chitimacha Settlement Act, S. 2294. Your office has already formulated some very complete ideas, as is evidenced by the Solicitor's letters of July 5, 1979, and July 22, 1980. Accordingly, I respectfully urge that your Office complete its investigation and formulate a favorable recommendation.

What happens to the Chitimachas will doubtlessly have a strong influence on the Tunica-Biloxis attorneys' future course of action. If it appears to them that the likelihood of a settlement has disappeared because of a change in policy, litigation involving a large number of landowners could result. I urgently call to your attention the date of December 31, 1982, which is the deadline under the statute of limitations, 28 USC 2415(b), for ancient money damage claims for trespass on Indian lands. The attorneys for the Tunica-Biloxi have indicated a necessity for the filing of land claims to protect the rights of their clients unless land claims have been settled or substantial progress made toward that goal prior to December 31, 1982.

Louisiana objected to recognition of the Tunica-Biloxi without settlement of all land claim matters at the same time. The BIA proceeded with recognition. This resulted in administrative findings of fact and declarations of law without interested landowners being made a party to the proceeding or being given a real opportunity to be heard. All this was done because Louisiana accepted and relied on the promise of strong assistance of the BIA and the Solicitor in seeking to find a settlement of Tunica-Biloxi claims substantially at Federal expense as had been proposed in the Chitimacha case.

Considering the foregoing, you are urgently requested to:

1. Chitimacha: withdraw the 50% contribution requirement;

2. Tunica-Biloxi: participate in the third settlement negotiation session scheduled for July 23, 1982, in room 154 of the Russell Senate Office Building, 1st Constitutional Avenue, N.E. Washington, D.C. 20510.

Innovative land claim settlement plans could be financed over a period of time. The threat to private ownership should be eliminated and not deferred to future administations.

Sincerely yours,

Fred G. Benton, Jr.

enclosure

carbon copy Hon. David C. Treen, Governor
Hon. William J. Guste, Jr., Attorney General
Louisiana Congressional Delegation

f

D'ANTONIO, HOSE & STANSBURY
ATTORNEYS & COUNSELORS AT LAW
824 BARONNE STREET
NEW ORLEANS, LOUISIANA 70113

GUY J. D'ANTONIO
JOHN C. HOSE
HARRY CASE STANSBURY

NOTARY PUBLIC
PHONE (504) 522-0651

July 23, 1982

Hon: Billy Tauzin
Congressman, Third District, Lousiana
Washington, D.C. 20515

Re: Chitimacha Land Claim

Dear Congressman Tauzin:

This letter is in response to an inquiry from the House Committee regarding the valuation of the Chitimacha Claim as distingushed from other eastern land claims.

As you are well aware, agricultural and oil and gas land in Louisiana is certainly much more valuable than timber land in the northeast.

It is the intention of the Tribe to purchase an additional 1,000 acres of land to expand the existing reservation. This purchase will be based upon Interior's formula of a willing buyer, willing purchaser arrangement.

The present fair market value of land ajacent to the Chitimacha reservation is approximately $4,000.00 per acre.

In 1980 Interior sent its appraiser, Mr. Robert Benzel, to appraise tracts of recognized title land, compromising approximately 2,500 acres. Mr. Benzel very conservatively appraised the value of the land, along with improvements, at $8.65 million.

An independent appraisal of the same land, based on present fair market value, would be in the range of $15-20 million.

It should be noted that only 2,500 acres of recognized title land was appraised at that time because of Interior's recommendation that the matter be settled, at that point in time, for $7.5 million. The apprasial done on the above said acreage was conducted, more or less, as a formality to justify their $7.5 million offer.

If the Tribe is compelled to continue with its litigation and title research, the amount of recognized title will range between 20-30,000 acres in the same areas. This, of course, would cause the apprasials to increase in value fifteen fold.

As you know, the tribe also has under litigation its claim for aboriginal title, which comprises approximately 2.9 million acres of land in south Louisiana. This will include all, or of substantially all of six Parishes in south Louisiana.

A very conservative estimate of the value of the aboriginal claim including present land value, improvements and mineral interests would certainly surpass the billion dollar figure.

The value of the Louisiana claim is also distinguishable from the other eastern land claims in that the Chitimachas are giving up their claim for damages for the trepass and extraction of their valuable mineral interests. These damages would be computed and based on the total amount any and all oil and gas which may have been extracted from the time of taking. Under the jurisprudence, these damages would be the total value of the minerals extracted. One can only guess, at this point in time, that the amount of an award for such damages would be astronomical.

This element does not exist in the other eastern claims.

As you can see, the $7.5 million figure proposed by the Chitimacha Land Claim Settlement Act is clearly reasonable and, with the above noted considerations, certainly in line with prior Indian land claim settlements.

We trust that this information will be of some use to you in your expert handling of this Bill.

Very truly yours,
D'ANTONIO, HOSE & STANSBURY

Guy J. D'Antonio

GUY J. D'ANTONIO

DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

JUL 28 1982

Dear Mr. Chairman:

This is to advise your Committee of the views of this Department on S. 2294, the "Chitimacha Claims Settlement Act."

The Department opposes the enactment of S. 2294. The bill provides for the settlement of the land claims of the Chitimacha Tribe of Louisiana. Section 5 of the bill would establish a Chitimacha Claims Settlement Fund in Treasury to which $7.5 million would be authorized to be appropriated. The Secretary of the Interior would hold the fund in trust for the benefit of the Chitimacha Tribe, and would establish terms agreed upon by the tribe for administering the funds. Section 5(a)(2) would require the Secretary to pay semiannually to the tribe any income derived from the fund.

An apparent intent of section 5(a) is to provide for the investment of monies in the settlement fund for the benefit of the Chitimacha Tribe, and for the payment to the tribe of any resulting investment income. Section 5(a)(2), however, conflicts with Treasury investment policy since it fails to authorize the Secretary of the Interior to request the Secretary of the Treasury to invest the principal of the settlement fund in public debt securities with maturities suitable to the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable U.S. obligations of comparable maturities.

This Department is also opposed to section 5(b)(2) of this bill, which would treat any transfer of land to the government by private owners pursuant to the settlement of an Indian tribal claim as an involuntary conversion under section 1033 of the Internal Revenue Code. The issue of whether a particular transfer is or is not a tax free involuntary conversion should depend on fact finding in

the case of each individual taxpayer affected, not on a blanket rule provided by statute for the benefit of a single group of taxpayers. This has been the position consistently taken by this Department in cases of Indian claim settlements.

This Department opposes enactment of S. 2294 for these reasons. With respect to the Administration's overall position on this bill we defer to the Department of the Interior.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

Margery Waxman

Deputy General Counsel

The Honorable
William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

MATERIAL SUBMITTED BY GUY J. D'ANTONIO,
D'ANTONIO, HOSE & STANSBURY

## THE CHITIMACHA INDIANS

The Chitimacha Tribe of Louisiana is a federally recognized Indian tribe situated in St. Mary Parish Louisiana. There are approximately 600 members on the tribal rolls and the present reservation consists of 250 acres in Charenton, Louisiana.

The Chitimachas have adopted a Constitution pursuant to the Indian Recorganization Act of 1934, 25 U.S.C. §§ 461-497, and are governed by a Tribal Council.

## THE CHITIMACHA LAND CLAIMS

The Chitimachas have, since time immemorial, owned and occupied portions of the present State of Louisiana as their aboriginal territory.

Both the French and Spanish sovereigns recognized the Chitimachas and their right to the lands which they occupied.

In 1803, the United States acquired the territory of Louisiana from France through the Louisiana Purchase Treaty, 18 Stat. 200. The sovereign proctection afforded the Chitimachas by the French and Spanish governments was carried forth by the Louisiana Purchase Treaty and the Indian Nonintercourse Act, which is presently codified at 25 U.S.C. § 177.

The Tribe has initiated law suits to recover recognized and aboriginal title to land located in St. Mary, Iberville, Ascension, St. Martin, Iberia and Assumption Parishes. It has been the Tribe's policy to avoid claiming townships and other populated areas, in order to prevent hardship and economic chaos in Louisiana.

The Chitimacha claim differs from the other eastern land claims in that the property was lost to individuals as opposed to a taking by the State. The basis of the various claims are set-forth below.

## THE ST. MARY PARISH CLAIM

As noted above, the present reservation is situated in St. Mary Parish. The area claimed consists of approximately

7000 acres of land. This property was taken from the Tribe in violation the laws of the French and Spanish sovereigns and the United States Indian Nonintercourse Act, all of which required the sovereigns express approval before any Indian land could be alienated. A copy of the Tribe's petition on the claim is attached herewith.

## THE IBERVILLE PARISH CLAIM

The Iberville Parish claim consists of approximately 2500 acres adjacent to the City of Plaquemines. This property formed a portion of the Chitimachas' recognized and aboriginal claim, and was also taken by individuals in voilation of the Indian Nonentercourse Act. The suit filed for reclaimation of the area is attached.

## THE CHITIMACHA CLASS ACTIONS

As mention above, the Chitimachas have laid claim to land situated in St.Mary, Iberville, Ascension, St. Martin, Iberia and Assumption Parishes. Class action suits were filed in the Eastern, Middle and Western Districts of the Louisiana Federal Courts. This area comprosises approximately one million acres of aboriginal territory. These suits are presently being held in abeyance, pending the settlement legislation presently before Congress. These suits are attached.

## THE CHITIMACHA LAND CLAIM SETTLEMENT LEGISLATION

Legislation has been introduced by Congressman Tauzin of Louisiana to compromise and settle the Chitimacha claim. (See H.R. 5358) The bill calls for the appropriation of 7.5 million dollars. The funds will be used by the Tribe to purchase additional land for the reservation and for tribal development.

The settlement legislation is supported by the Chitimacha Tribal Council, the various defendants, the State of Louisiana, the Louisiana Congressional Delegation, land owners associations and all interested parties.

The effect of the passage of the legislation will be to provide the Tribe with sufficient funds for tribal expansion and development. The legislation will also extinguish all Chitimacha land claims and will quiet title and restore peaceable possession to the defendant landowners.

Respectfully Submitted,
D'ANTONIO, HOSE & STANSBURY

BY: GUY J. D'ANTONIO AND HARRY CASE STANSBURY